

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 527

THE UNITED STATES OF AMERICA, PETITIONER

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, ET AL.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT

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1 In the United States Circuit Court of Appeals
for the Second Circuit

Eq. 85-73

UNITED STATES OF AMERICA, PETITIONER

HONORABLE FRANCIS G. CAFFEY, UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENT

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

ALUMINUM COMPANY OF AMERICA, DEFENDANT-APPELLEE

*Petition for writ of mandamus to Honorable Francis G. Caffey,
United States District Judge, Southern District of New York,
and for other relief*

Filed Oct. 7, 1947

To the Honorable Learned Hand, Thomas W. Swan, and Augustus
N. Hand, United States Circuit Judges:

The petition of the United States of America, hereinafter referred to as the plaintiff, respectfully shows that:

1. This Court, on appeal to it by virtue of a certificate of the Supreme Court under the amendment of 1944 to Section 29 of 15 U. S. C. A., reversed a judgment of the United States District Court of the Southern District of New York that the defendant Aluminum Company of America, referred to hereafter as Alcoa, was not monopolizing the aluminum ingot market.

2. This Court in an opinion filed March 12, 1943, found that Alcoa in 1940 had a monopoly of the ingot market, and that Alcoa had secured the monopoly in violation of Section 2 of the Sherman Act. The Court held that the need for dissolution of Alcoa would depend upon the form of the aluminum industry after the plaintiff should dispose of the plaintiff's wartime aluminum plants and facilities; that the need for such a remedy was for the District Court in the first instance; and that the latter court "must wait" until it learns what the government "agency" charged with disposal of plaintiff's aluminum plants has done before the District Court could act. Although this Court expressly refrained from any statement controlling the decision of the District Court, this Court pointed out that the measure of the plaintiff's success in transferring plants to persons who can "effectively compete with 'Alcoa'" would be one condition

upon the propriety of dissolution. (Appendix A attached to and made part of this petition is so much of the opinion of the Court as relates to "The Remedies," 148 F. 2d. 410, 445.)

3. The mandate of this Court, entered on March 28, 1945, reversed the judgment as to Alcoa "in accordance with the opinion of this court" and the cause was "remanded for further proceedings not inconsistent with the opinion of this court" (Appendix B, Order for Mandate).

4. Thereupon the District Court, after hearing the parties, entered a judgment on April 23, 1946. The twelfth paragraph of that judgment provides that jurisdiction is reserved for such time as may be necessary after the agency shall have proposed a plan or program for the disposition of the plaintiff's aluminum plants, in order that the Attorney General may apply for dissolution or other relief; and "for the purpose of enabling Alcoa to apply to this court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States" (Appendix C, Judgment).

5. Pursuant to the above quoted provision of Paragraph 12 of the judgment, on March 31, 1947, Alcoa filed in the District Court a petition alleging that a competitive disposal program had been submitted by the agency and approved by the Congress, and that some of plaintiff's plants had been sold and others were leased or under letters of intention to lease to Reynolds Metals Company and to corporations affiliated with and controlled by Henry J. Kaiser & Company. The petition prays that—

"a final judgment be entered in the above-entitled case adjudicating that Aluminum Company of America no longer has a monopoly of the aluminum ingot market of the United States and that, in consequence of the termination of such monopoly of the aluminum ingot market, competitive conditions have been restored in the aluminum industry" (Appendix D, Petition of Alcoa).

6. The plaintiff moved to dismiss the petition for failure to state a claim upon which relief could be granted (Appendix E). The District Court, denying the plaintiff's motion, stated in a memorandum opinion:

"Furthermore whether or not Alcoa should now be dissolved, a question specifically left open by the Circuit Court of Appeals, cannot be decided until it is determined whether or not it still has a monopoly of the ingot market" (Appendix F).

An order denying the plaintiff's motion to dismiss the petition was entered June 2, 1947, the order requiring the plaintiff to answer within ten days after service of the order (Appendix G). In obedience to the requirement of the order, plaintiff filed an answer to the petition, which asserts among other things that

the approved competitive disposal program has not been substantially completed; that many of the plant disposals have been made under lease or letter of intent to lease and are subject to cancellation; that it cannot be ascertained presently whether the disposals thus far made have been disposals to persons who can effectively compete with Alcoa; and that at this time application by the plaintiff for, and settlement of the need for dissolution would be premature (Appendix H, Answer).

7. Trial of the issues raised on Alcoa's petition has been fixed for October 15, 1947.

8. Trial of Alcoa's petition would be inconsistent and not in conformity with the opinion and mandate of this Court in that (a) under the opinion and mandate the district court has only the authority to determine the relief necessary under the earlier and final adjudication of monopoly by this Court, and has no authority to impair or frustrate the determination of that question by a new proceeding seeking to determine whether Alcoa has a present monopoly, (b) the opinion and mandate contemplated that only the plaintiff should have standing to initiate further proceedings in the District Court for the entry of final decree in this case, and (c) the agency's disposal program has not yet reached the point fixed by this Court as a condition precedent to any further proceeding in the District Court.

(a) The opinion and mandate of this Court settled as the law of the case to be followed by the District Court that Alcoa in August 1940 had a monopoly of and had monopolized the aluminum ingot market in violation of the Sherman Act, leaving open for the District Court only the question of appropriate relief. Trial of Alcoa's petition will be inconsistent with the opinion and mandate in that it will require determination anew of the question of unlawful monopoly as distinguished from the question of relief necessary to eliminate and dissipate the effects of the adjudicated monopoly. The rules of law, issues and evidence essential in determining the fact of monopoly are fundamentally different from those applied in determination of the relief needed to protect the public interest from the effects of an adjudicated monopoly. The function of the Court is also different in that in determining relief the Court exercises a judicial discretion and any doubts are resolved in favor of the public interest. Alcoa's petition for a final judgment in effect seeks to prevent the plaintiff from securing a determination of the need for relief, and to frustrate the mandate of this court.

(b) The opinion and mandate left open for the district court only the question of appropriate relief, and contemplated that only the plaintiff should have standing to initiate further proceedings for the entry of a final decree in this case. The plaintiff

has not filed in the district court any application for dissolution or other relief. In the absence of such application by the plaintiff, Alcoa has no standing to seek, and the district court has no authority to entertain an application by Alcoa for, a final judgment that Alcoa has no monopoly and that in consequence competitive conditions have been restored.

5 (c) The opinion and mandate of this Court directed the District Court to postpone further proceedings until there is sufficient execution of the agency's disposal program to permit resolution of the question whether the program will or will not create effective competition. The official reports of the agency to the Congress, attached to and made part of this petition as Appendices I and J, show on their face that the success of the program cannot yet be measured, and that in fact the disposal program is as yet far from completed. The most recent of those reports, that of War Assets Administration dated February 12, 1947, shows that a competitive disposal program, approved by Congress, is in an incipient state of execution by the agency. Thus, the report shows that as of November 30, 1946, the plaintiff's investment in aluminum plants was 665.4 million dollars; that disposal has been made of plants costing 387.8 millions, of which plants costing 296.0 millions were disposed of by short term leases subject to earlier cancellation, and plants costing 79.6 millions were disposed of by sale (table 2, p. 39; and p. 8). A further analysis of these disposals, set out in Appendix 2 of the report (p. 47-49), shows that in fact only 43.1 millions were disposed of by sale for use in the production of aluminum. Referring to plants sold or leased to Reynolds and Kaiser the report declares that they have

"provided for these companies the potentialities of becoming competitive factors in the industry, assuming that they can insure access to substantial and economical sources of bauxite" (p. 4).

Elsewhere the agency plainly states its inability to report that disposal of the plaintiff's aluminum facilities has been made to persons who can effectively compete with Alcoa:

"Mere possession of such productive capacity will not, of itself, give rise to competition. Other prerequisites must be met before genuine competition can be achieved. One of these is keeping the newly acquired facilities in substantial production, for it is output and the ability to sell that output that will ultimately be a deciding factor (p. 5) * * *

6 "In view of the high proportion of leases, with the concomitant possibility that some plants may ultimately be returned when the leases are terminated by cancellation or expiration, WAA cannot yet consider its task completed as far as the aluminum industry is concerned" (p. 8).

Consequently, entertaining at this time of further proceedings would be inconsistent with the opinion and mandate of this Court.

9. Trial of Alcoa's petition will needlessly consume judicial effort for an extended period of time, in the trial court and in an appellate court in the event of an appeal, in an attempt to adjudicate an issue outside the mandate of this Court.

Wherefore, the plaintiff prays:

(1) That a writ of mandamus issue from this Court directing the Honorable District Judge to execute the mandate of this Court, to vacate so much of paragraph 12 of the judgment of April 23, 1946, as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly, and to dismiss the petition of Alcoa.

(2) That such stay of the trial proceedings fixed by the Honorable District Judge to commence on October 15, 1947, as may be necessary to enable this Court to hear and determine this petition, be granted.

(3) That plaintiff have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted.

LEONARD J. EMMERLICK,
KENNETH KIMBLE,

Special Assistants to the Attorney General.

HORACE H. ROBBINS,

Special Attorney.

PHILIP B. PERLMAN,
Solicitor General.

JOHN F. SONNETT,
Assistant Attorney General.

GEORGE B. HADDOCK,
Special Assistant to the Attorney General.

Appendix A to petition

(148 F. 2d 416, 445 et seq.)

IV

THE REMEDIES

Nearly five years have passed since the evidence was closed; during that time the aluminum industry, like most other industries, has been revolutionized by the Nation's efforts in a great crisis. That alone would make it impossible to dispose of the action upon the basis of the record as we have it; and so both sides agree; both

appeal to us to take "judicial notice" of what has taken place meanwhile, though they differ as to what should be the result. The plaintiff wishes us to enter a judgment that "Alcoa" shall be dissolved, and that we shall direct it presently to submit a plan, whose execution, however, is to be deferred until after the war. It also asks a termination of all shareholding in common between "Alcoa" and "Limited"; and that injunctions shall go against any resumption of the putative unlawful practices. On the other hand, "Alcoa" argues that, when we look at the changes that have taken place—particularly the enormous capacity of plaintiff's aluminum plants—it appears that, even though we should conclude that it had "monopolized" the ingot industry up to 1941, the plaintiff now has in its hands the means to prevent any possible "monopolization" of the industry after the war, which it may use as it will; and the occasion has therefore passed forever which might call, for, or justify, a dissolution: the litigation has become moot. "Limited" on its part argues that, so far as concerns the "Alliance"—the only practice which we are holding unlawful—the war has killed it forever; and, more particularly that the decision in *United States v. Hamburg-Amerikanische Packet-Fahrt*, 239

U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387, is on all fours.

8 We do not agree with either side; but, before giving our reasons, we must determine for what purposes we may look outside the record.

Both sides agree that the judgment in this action should speak from the time of its entry, like a decree upon an old bill in equity (indeed, until the advent of the New Rules, the action would have been a "suit in equity," though the "bill" was until then more properly described as a "petition" and the plaintiff as a "petitioner"). There is no reason why an appellate court upon deciding an appeal from such a judgment should not direct the district court what judgment to enter; and so it often does. Nor is there any reason why in deciding what judgment to direct, it should not advise itself from outside the record of such facts as appear to admit of no genuine dispute—i. e., should take "notice" of whatever the district court itself might take "notice." Indeed, it would otherwise be impossible for an appellate court ever to dismiss an action upon the ground that it had become moot. We may, and we do, accept the figures of aluminum production in the report of the so-called "Truman Committee" as of March 1944, which showed that the annual production of "Alcoa's" plants was about 838 million pounds; that the production of plants owned by the plaintiff which it had leased to "Alcoa," was about 1,206 million pounds; and that the production of the Reynolds and Olin plants was together, 202 million pounds—a total of about 2,200 million pounds.

The case is otherwise as to any facts already existing in August 1940, such as the amount of bauxite in Arkansas, as to which the "Truman Report" also contains figures. Even though we took "notice" of these, the report would not be conclusive, or more than evidence. We could not constitutionally substitute it for the findings of a court after a trial—facts which a court may judicially "notice" do not for that reason become indisputable. *Wigners*, § 2567a. At most we could do no more than treat the report as newly discovered evidence, and send the issue back for another trial, which in the present case we should under no circumstances be willing to do. For these reasons we refuse to take "notice" of facts relevant to the correctness of the findings; but we do take "notice" of those relevant to remedies.

9 After doing so, it is impossible to say what will be "Alcoa's" position in the industry after the war. The plaintiff has leased to it all its new plants and the leases do not expire until 1947 and 1948, though they may be surrendered earlier. No one can now forecast in the remotest way what will be the form of the industry after the plaintiff has disposed of these plants, upon their surrender. It may be able to transfer all of them to persons who can effectively compete with "Alcoa"; it may be able to transfer some; conceivably, it may be unable to dispose of any. The measure of its success will be at least one condition upon the propriety of dissolution, and upon the form which it should take, if there is to be any. It is as idle for the plaintiff to assume that dissolution will be proper, as it is for "Alcoa" to assume that it will not be; and it would be particularly fatuous to prepare a plan now, even if we could be sure that eventually some form of dissolution will be proper. Dissolution is not a penalty but a remedy; if the industry will not need it for its protection, it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency. The need for such a remedy will be for the district court in the first instance, and there is a peculiar propriety in our saying nothing to control its decision, because the appeal from any judgment which it may enter, will perhaps be justiciable only by the Supreme Court, if there are then six justices qualified to sit.

But there is another, and even more persuasive, reason why we should not now adjudge a dissolution of any kind. The Surplus Property Act of 1944 provides the method by which the plaintiff's "surplus" properties shall be disposed of: "aluminum plants and facilities" among the rest, § 19 (c) (1). The "Surplus Property Board," § 5 (a), is to "designate one or more Government agencies to act as disposal agencies," § 10 (a), and they are to "have responsibility and authority for the disposition of such property and for the care and handling of such property, pending its disposition," § 11 (d), subject to the Board's regulations. These

"agencies" may dispose of the properties "by sale, exchange, lease, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions, as the agency deems proper" § 15 (a). The following, among other "objectives," are to "regulate the orderly disposal of surplus property": "(b) to give maximum aid in the reestablishment of a peacetime economy of free independent private enterprise"; "(d) to discourage monopolistic practices and to strengthen and preserve the competitive position of small business concerns in an economy of free enterprise"; "(p) to foster the development of new independent enterprise"; "(r) to dispose of surplus property as promptly as feasible without fostering monopoly or restraint of trade * * *". So far as consistent "with the usual and customary commercial practice" preference is to be given to smaller purchasers, § 18 (b); to whom, when proper, money may be lent § 18 (f). Finally, no "disposal agency" shall even "begin negotiations" to sell a plant which has cost over a million dollars without advising the Attorney General of "the probable terms or conditions" of the sale; and he in turn must tell the "agency" whether "the proposed disposition will violate the antitrust laws." The act must not be read to "impair, amend, or modify" those laws, or to "prevent their application" to purchasers of surplus property. In view of these declarations of the purpose of Congress, the "agency" which the Board "designates" to dispose of the plaintiff's "aluminum plants and facilities" may well believe that it cannot do so without some plan or design for the industry as a whole, some comprehensive model which shall, so far as practicable, reestablish "free independent private enterprise," "discourage" monopoly, "strengthen" small competitors, "foster" independents and not foster "monopoly or restraint of trade." If it should find this method desirable, it would have to learn what purchasers were in the market, how strong they were, what units they could finance and operate, and in what position they would be to compete. In such a model or design the "agency" would have to assign a place to "Alcoa," and that place no one of course can now anticipate. Conceivably "Alcoa" might be left as it was; perhaps it might have to be dissolved; if dissolved, the dissolution would depend upon how the other plants were distributed. If the "agency" should find it wise to proceed in this way, it may succeed in inducing "Alcoa" to accept the place assigned to it, particularly if the plan has not been prepared ex parte. If it does not succeed, then, but then only, will it be appropriate for the district court to act. We do not of course mean that in deciding whether to dissolve "Alcoa," or how to do it, that court must be governed by any plan which the "agency" may have devised, if it does devise

one. But, plan or no plan, it must wait until it learns what the "agency" has in fact done. Moreover, if the "agency" does form a plan, it will have been an attempt to realize the same "objectives" for which the court itself must strive; and the court may well feel that it should accord to the "agency's" plan that presumptive validity which courts are properly coming more and more to recognize in the decisions of specialized tribunals. Nothing which we now say ought in any measure to limit the discretion of the "agency" to proceed in this way. Therefore we shall merely reverse the judgment, so far as it held that "Alcoa" was not "monopolizing" the ingot market, and remand the case to the district court.

From what we have already said, we must deny the plaintiff's prayer that those shareholders who own shares in both "Alcoa" and "Limited," shall dispose of one or the other. Since we have affirmed all the findings as to unlawful practices except the "price squeeze" itself, "Alcoa" insists that, even if it was unlawful, it has been discontinued now for twelve years, and that there is no likelihood that it will ever be resumed. "Alcoa" might add that, since there can be no "squeeze" if "sheet rollers" can buy ingot at competitive prices, there can be no need of an injunction; if that privilege is assured to them, and that, since it will be assured to them when the final judgment is entered, an injunction would only bring coals to Newcastle. We defer for the moment any general discussion as to when abandonment of a practice ought to bar an injunction, for we shall have to consider it more specifically in the case of "Limited." It is enough here to say that, since "Alcoa" abandoned the "squeeze" only after it became aware that it was under investigation, it is in no position now to complain of whatever stigma there may be in an injunction; in such a setting there is no place for sensibilities; nor should lapse of time secure immunity. More can be said for the argument that 12 "Alcoa" will be unable to "squeeze" at all, if it loses its monopoly; but no one can be sure how the industry may change, and it is impossible to say that the same practice may not in the future commend itself to those who may come into control; and at any rate there can be no injustice in making assurance doubly sure. An injunction will go against any resumption of the "price squeeze"; the terms to be decided by the district court.

Unless the issue has become moot, "Limited" also must be enjoined from entering into any "cartel," or agreement like that of 1936, covering imports into the United States; and even though it had become moot we should then dismiss the complaint without prejudice, as in *United States v. Hamburg-Amerikanische Packet-Fahrt*, supra, 239 U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387. We think, however, that the issue has not become moot, and that there are

vital distinctions between the situation before us and that then before the Supreme Court. A number of steamship lines had there agreed to apportion between them the carriage of steerage passengers upon a noncompetitive basis. Two or three of the lines were German, and the agreement was to end in any event on December 3, 1915. Moreover, it provided that "the withdrawal of any one of the lines from the contract should release all others from all future obligation unless the others agreed among themselves to continue," 239 U. S. at page 472, 36 S. Ct. 215. The decision was rendered on January 10, 1916, after the contract had come to an end, and after war had been waged for over a year between Germany and the Allies. The court treated the last circumstance as putting an end to the contract which certainly it did, so far as concerned the German lines. As between the other parties the contract was also terminated, if the exclusion of the Germans because of the war was a "withdrawal from the contract," as it should have been regarded. Besides, the contract was of such a kind that the exclusion of the German lines probably made impossible the realization of its purposes in any part; for the traffic divided was only between European ports and the United States and Canada, and it would scarcely have value to any of the parties unless all the large lines joined.

13 The agreement of 1936, on the other hand, was to last for 99 years, though it could be terminated on six months' notice by any shareholder who held 200 shares, and all held as many as 200. As we have seen, the two German smelters had been exempted from royalties; and it is altogether clear what future part remained for them in the enterprise, although some past obligations were compromised. It is true that some eighteen months before war was declared the other shareholders ceased to perform the agreement, but no one ever gave the prescribed notice of dissolution and, formally at least, the agreement continued and still continues. Indeed, it is possible that all but the German shareholders can start up the system again without renewal, if they please. The only doubt is whether the termination of the Germans' connection by the war automatically put an end to the agreement as between the others; and at least a strong argument can be made, in view of the provision for dissolution by notice, that it was not to be dissolved by the mere withdrawal of shareholders, certainly of shareholders who were not within the quota and did not share the royalties. Finally, the two situations differ in the fact that the "Alliance" itself, as a corporation, still persists, and all the original shareholders presumably remain such. The mere cessation of an unlawful activity before suit does not deprive the court of jurisdiction to provide against its resumption; a "case or controversy" may remain to be disposed of. There are plen-

tiful authorities so holding. *Southern Pacific T. Co. v. Interstate Commerce Commission*, 212 U. S. 498, 514-516, 31 S. Ct. 279, 55 L. Ed. 310; *Goshen Manufacturing Co. v. Myers Manufacturing Co.*, 242 U. S. 202, 37 S. Ct. 105, 61 L. Ed. 248; *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, 271, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307; *Federal Trade Commission v. Goodyear Co.*, 304 U. S. 257, 260, 58 S. Ct. 863, 82 L. Ed. 1326; *Walling v. Haile Gold Mines*, 4 Cir., 136 F. 2d 102, 105. To disarm the court it must appear that there is no reasonable expectation that the wrong will be repeated.

That is not true in the case at bar. Unless we are to grant an injunction, we ought not pass upon the issue; if we do not pass upon the issue, we are by no means persuaded that "Limited," when peace comes, will not enter into another "cartel" which again attempts to restrict imports. It has insistently argued that the Act does not cover such an agreement; and it alleges that it was forced into the "cartel," if it was to do a European business at all. It may be forced to do so again, unless a judgment forbids.

The judgment dismissing the complaint against the Goods Company will stand. The injunctions granted will embrace the officers of those corporate defendants against which they run.

Judgment reversed, and cause remanded for further proceedings not inconsistent with the foregoing.

15 *Appendix B to petition*

United States Circuit Court of Appeals, Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of March one thousand nine hundred and forty-five.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

UNITED STATES, PLAINTIFF-APPELLANT

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS-APPELLEES

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court dismissing the complaint against the Goods Company be and it hereby is affirmed; as to the other defendants it is reversed in accordance with the opinion of this court, and cause remanded for further proceedings not inconsistent with the opinion of this court.

[SEAL]

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL,
Clerk.

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Appendix C to petition

United States District Court, Southern District of New York

Eq. 85-73

UNITED STATES OF AMERICA, PETITIONER

v.

ALUMINUM COMPANY OF AMERICA; ALUMINUM LIMITED; THE ALUMINUM COOKING UTENSIL COMPANY; ALUMINUM GOODS MANUFACTURING COMPANY; ALUMINUM MANUFACTURES, INCORPORATED; ALUMINUM ORE COMPANY; ALUMINUM SEAL COMPANY; ALCOA POWER COMPANY, LIMITED; ALTON AND SOUTHERN RAILROAD; BAUKITE AND NORTHERN RAILWAY COMPANY; CAROLINA ALUMINUM COMPANY, CEDARS RAPIDS TRANSMISSION COMPANY, LIMITED; FRANKLIN FLUORSPAR COMPANY; KNOXVILLE POWER COMPANY; LOUISIANA TERMINAL COMPANY; MASSENA SECURITIES CORPORATION; THE MASSENA TERMINAL RAILROAD COMPANY; NANTAHALA POWER AND LIGHT COMPANY; ALCOA STEAMSHIP COMPANY, INC. (FORMERLY OCEAN DOMINION STEAMSHIP COMPANY); ALCOA MINING COMPANY (FORMERLY THE REPUBLIC MINING AND MANUFACTURING COMPANY); THE ST. LAWRENCE RIVER POWER COMPANY; ST. LOUIS AND OHIO RIVER RAILROAD; SURINAAMSCHE BAUKITE MAATSCHAPPIJ; THE UNITED STATES ALUMINUM COMPANY; THE COALESCED COMPANY; THE ALOXITE CORPORATION; J. H. ALGER; EARL BLOUGH; L. BRAASCH; AILSA MELLON BRUCE; DAVID K. E. BRUCE; GEORGE H. CLAFF; SAFFORD K. COLBY; ANDREW HENRY COUANNIER; ARTHUR V. DAVIS; EDWARD K. DAVIS; J. J. DEMEKIE; M. B. DESOUSA; F. L. FARRELL; EDWIN S. FICKLES; C. B. FOL; AIME GROFFRION; GEORGE R. GIBBONS; ROY A. HUNT; J. R. D. HOUSTON; ALVAH K. LAWRIE; C. L. LYCETTE; DEIGHTON MCCARTHY; PAUL MELLON; DAVID K. E. BRUCE AND DONALD D. SHEPARD, AS EXECUTORS OF ANDREW W. MELLON, DECEASED; PAUL MELLON;

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RICHARD K. MELLON; UNION TRUST COMPANY OF PITTSBURGH, RICHARD K. MELLON, JENNIE KING MELLON AND SARAH MELLON SCAIFE, AS EXECUTORS OF RICHARD B. MELLON, DECEASED; G. O. MORGAN, JR.; CHARLES H. MORITZ; NONA L. NEILSON, AS EXECUTRIX OF WINTHROP C. NEILSON, DECEASED; SARAH MELLON SCAIFE; GEORGE J. STANLEY; W. C. TERRY; PAUL J. URQUHART; J. P. VAN LANE; IRVING W. WILSON; AND ROBERT E. WITHERS, DEFENDANTS

JUDGMENT ON MANDATE AGAINST ALUMINUM COMPANY OF AMERICA,
ET AL.

And now, on this 23d day of April 1946, this cause came on further to be heard in obedience.

Appeals for the Second Circuit, dated March 28, 1945, and filed herein on March 29, 1945, and was argued by counsel, and thereupon, upon consideration thereof, and in accordance with the opinion of said court, it is ordered, adjudged, and decreed as follows:

1. The mandate of the United States Circuit Court of Appeals for the Second Circuit, filed herein on March 29, 1945, as aforesaid, is hereby made the order of this court.

2. The final judgment, entered herein on July 23, 1942, insofar as it dismissed the amended petition herein on the merits as against Aluminum Goods Manufacturing Company, be, and it hereby is, affirmed.

3. The final judgment, entered herein on July 23, 1942, insofar as it dismissed the amended petition herein on the merits as against the defendants, The Aluminum Cooking Utensil Company; Aluminum Manufacturers, Incorporated; Aluminum Ore Company; Aluminum Seal Company; Alcoa Power Company, Limited; Alton and Southern Railroad; Bauxite and Northern Railway Company; Cedar Rapids Transmission Company, Limited; Knoxville Power Company; Louisiana Terminal Company; Massena Securities Corporation; The Massena Terminal Railroad Company; Nantahala Power and Light Company; Alcoa Steamship Company, Inc. (formerly Ocean Dominion

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Steamship Company); Alcoa Mining Company (formerly The Republic Mining and Manufacturing Company); The St. Lawrence River Power Company; St. Louis and Ohio River Railroad; Surinamsche Bauxite Maatschappij; The Coalesced Company; The Alomite Corporation; Ailsa Mellon Bruce; Paul Mellon, David K. E. Bruce and Donald D. Shepard, as Executors of Andrew W. Mellon, deceased; Paul Mellon; Union Trust Company of Pittsburgh, Richard K. Mellon, Jennie King Mellon and Sarah Mellon Scaife, as Executors of Richard B. Mellon, de-

ceased; Nina L. Neilson, as Executrix of Winthrop C. Neilson, deceased; and Sarah Mellon Scaife, be, and it hereby is affirmed.

4. The final judgment, entered herein July 23, 1942, insofar as it dismissed the amended petition herein as against the defendants, J. H. Alger; L. Braasch; André Henry-Couannier; M. B. deSouza; F. L. Farrell; Aimé Geoffrion; Alvan K. Lawrie; Leighton McCarthy; W. C. Terry; J. F. Van Lane; and Franklin Fluorspar Company, for the reason that this action had abated as to them, they not having been served with process or having appeared herein, be, and it hereby is, affirmed.

5. The judgment entered herein on July 23, 1942, insofar as it dismissed the amended petition as against the defendants, Aluminum Company of America; Carolina Aluminum Company (formerly Tallassee Power Company); The United States Aluminum Company; David K. E. Bruce; George H. Clapp; Safford E. Colby; Arthur V. Davis; Edward K. Davis; J. J. Domaskie; Edwin S. Fickes; C. B. Fox; George R. Gibbons; Roy A. Hunt; J. R. D. Houston; C. L. Lycette; Richard K. Mellon; Charles H. Moritz; George J. Stanley; Paul J. Urquhart; Irving W. Wilson; and Robert E. Withers, be, and it hereby is, reversed.

6. The following Findings of Fact and Conclusions of Law, among those dated and filed herein on July 14, 1942, are amended so as to read as follows, respectively, viz:

Finding No. 153.—The evidence does not show, nor is there basis for an inference, that, as alleged in substance in the amended petition, Aluminum Company of America owns or controls, or has ever owned or controlled, more than, or any proportion approaching as much as, 85% of the combined total of virgin
19 aluminum produced and imported and of the competitive secondary or scrap aluminum moving in interstate trade or commerce in the United States.

Finding No. 154.—The virgin aluminum ingot market in the United States consists of, and its aggregate is measured by, (a) the production of virgin aluminum ingot by Aluminum Company of America and (b) the importations of virgin aluminum ingot into the United States, both by Aluminum Company of America and by others. The percentage of this total which was both produced and imported by Aluminum Company of America during the period from February 2, 1900, to August 14, 1940, as shown in Column H of Section XL at pages 118 and 119 of petitioner's Appendix to its Brief submitted to the United States Circuit Court of Appeals for the Second Circuit, varied from a low of 67.90% in 1921 to a high of 99.90% in 1918. Except for the year 1921 and the years 1910, 1913 and 1922, when its percentage was 74.08%, 72.74% and 72.09%, respectively, its percentage was al-

ways over 80%, and from 1934 to 1938, it averaged a trifle over 90%.

Finding No. 155.—Since February 2, 1909, the date of the expiration of its patent monopoly, Aluminum Company of America, by building new plants, increased its capacity for production of virgin aluminum ingot more than eightfold, with the intention of maintaining its control of the virgin aluminum ingot market in the United States by anticipating increases in the demand for virgin aluminum ingot, and has thereby excluded all competitors from producing virgin aluminum ingot in the United States. It has not, however, since, at latest, June 7, 1912 (the date of the consent decree), entered, or intended or attempted to enter, into any agreement, understanding, combination, or conspiracy, with a competitor or a potential competitor, or formed a partnership, or combined, or merged, or consolidated with a competitor, or a potential competitor, designed (a) to monopolize or restrain the production or sale of virgin aluminum ingot, or (b) to exclude others, or anyone, from a fair opportunity to engage in the production or sale of virgin aluminum ingot, or (c) to limit production of virgin aluminum ingot, or to fix prices therefor, or to allocate markets therefor, or (d) to prevent, suppress or decrease competition in the production or sale of virgin aluminum ingot, or to hinder, prevent or suppress a competitor, or potential competitor, therein; nor has it paid any sum of money or extended any privilege to any such competitor, or potential competitor, in order to prevent competition, nor has it acquired in excess of its reasonable needs raw materials necessary in the commercial production of virgin aluminum ingot.

Finding No. 257.—From 1925 to 1932 Aluminum Company of America maintained differentials between its selling prices of virgin aluminum ingot and certain gauges of the products fabricated from hard alloys of aluminum, commonly known as duralumin or 17 S flat sheet, at such levels as to prevent fabricators of certain gauges of 17 S flat sheet from manufacturing and selling the same at a reasonable profit. The petitioner concedes, and the evidence establishes, that the extent to which such differentials have been unduly narrow is satisfactorily determinable only from the books of Aluminum Company of America. With respect to the differentials applicable to products fabricated from hard alloys, the petitioner adduced no evidence whatever from such books and no reliable evidence from any other source. The only evidence from the books on the subject was adduced by Aluminum Company of America and related exclusively to 17 S flat sheet, which is one of the hard alloys. This evidence establishes that during the whole of the year 1933, and ever since, an independent fabricator of 17 S flat sheet, if at prices efficient, would have been able

to purchase virgin aluminum ingot at prices at least as high as those at which it was sold by Aluminum Company of America and would have been able to sell 17 S flat sheet at least as low as those charged therefor by Aluminum Company of America and make a reasonable profit thereon.

Finding No. 258.—It is possible that those who in the future may come into control of Aluminum Company of America may resume the practice which existed from 1925 to 1932, described in Amended Finding of Fact No. 257.

Finding No. 260.—From 1925 to 1932 Aluminum Company of America maintained prices for virgin aluminum ingot which were higher than fair prices based on the cost of production of such virgin aluminum ingot.

21 *Finding No. 261.*—The evidence does not show; nor is there basis for an inference, that Aluminum Company of America forced, nor that any act of Aluminum Company of America contributed to forcing, Baush Machine Tool Company to quit the aluminum or aluminum alloy business. The failure of the Baush Company to survive in competition with Aluminum Company of America was due to its own deficiencies and to its own errors of judgment described in Finding of Fact No. 255.

Finding 262.—At least as early as 1930 independent fabricators of 17S flat sheet complained to Aluminum Company of America that the differentials maintained by it, described in Amended Finding of Fact No. 257, prevented their fabricating and selling 17S flat sheet at a reasonable profit.

Finding No. 262A.—The evidence does not show, nor is there basis for an inference, that Aluminum Company of America (a) has ever monopolized, or intended or attempted (except as found in Amended Finding of Fact No. 257), or contracted, or combined, or conspired to monopolize the production or sale of hard alloys of aluminum, or (b) has ever contracted, or combined, or conspired to exclude others, or any one, from a fair opportunity to produce or sell hard alloys of aluminum, or (c) has ever contracted, or combined, or conspired to exercise the power of fixing arbitrary or discriminatory or unreasonable prices of hard alloys of aluminum, or (d) has ever entered, or intended or attempted to enter, into any agreement, or understanding, or contract, or combination, or conspiracy with others, or with any one, to fix prices, or to allocate markets, or to restrict the production or sale of hard alloys of aluminum.

Finding No. 280.—From 1925 to 1932 Aluminum Company of America maintained differentials between its selling prices of virgin aluminum ingot and five gauges of 2S and 3S coiled sheet and four gauges of 2S and 3S flat sheet at such levels as to prevent fabricators of such 2S and 3S coiled and flat sheet from manu-

facturing and selling the same at a reasonable profit. The petitioner concedes, and the evidence establishes, that since 1932 such sheet differentials have not been unduly narrow; nor since that date has there been any violation of law by Aluminum Company of America with respect to sheet differentials.

No evidence whatever was offered with respect to the differentials applicable to fabricated aluminum products other than duralumin sheet, aluminum cable, and aluminum sheet. With respect to aluminum sheet the evidence establishes that the extent to which there were narrow differentials is determinable only from the books of Aluminum Company of America. The only reliable evidence adduced with respect to aluminum sheet differentials prior to 1933 is that taken from the books of Aluminum Company of America and that is limited to the period 1925-1932.

Finding No. 281.—The evidence introduced from books of Aluminum Company of America with respect to aluminum sheet differentials was limited to five gauge groups of 2S and 3S coiled sheet, four gauge groups of 2S and 3S flat sheet and five gauge groups of 17S hard alloy or duralumin, for each of the eight years in the period of, viz, 1925-1932, a total of 112 items. The sheet differentials, determined by subtracting the prices received by Aluminum Company of America for virgin aluminum ingot from the prices received by it for such aluminum sheet, were less than the cost of fabrication of aluminum ingot into sheet in 31 out of the 112 items. For all five gauges of coiled sheet the average profit open to competing fabricators during this period was 0.84 cent a pound as against 4.7 cents per pound for the five succeeding years, viz, 1933-1937, for the four gauges of flat sheet the corresponding figures were 0.59 cent and 4 cents, and for hard alloy sheet 4.9 and 11.8 cents.

Finding No. 283.—The evidence does not show, nor is there basis for an inference, of, what were the costs of sheet competitors of Aluminum Company of America for fabricating aluminum sheet or that such sheet competitors operated efficiently or with good judgment. Through the period when it was engaged in manufacturing and selling sheet Baugh Machine Tool Company operated inefficiently and in important respects without good judgment. Sheet Aluminum Corporation was hampered by lack of experience, equipment, and capital, and, as recognized by its officers, it was not until 1935 that it began to operate efficiently. The evidence does not show, nor is there basis for an inference of, what was the quantity, if any, of sheet sold by such sheet competitors

of gauges and types wherein the selling differentials of Aluminum Company of America were less than its cost of fabrication, or the quantity of sheet of such gauges and types which were sold by Aluminum Company of America.

Finding No. 284.—It is possible that those who in the future may control Aluminum Company of America may resume the practice which existed from 1925 to 1932, described in Amended Finding of Fact No. 280.

Finding No. 285.—At least as early as 1930, independent fabricators of 2S and 3S sheet, both coiled and flat, complained to Aluminum Company of America that the differentials maintained by it, described in Amended Finding of Fact No. 280, prevented their fabricating and selling 2S and 3S sheet, both coiled and flat, at a reasonable profit.

Finding No. 286.—From 1925 and 1932, for certain gauges of 2S and 3S sheet, both coiled and flat, and certain gauges of 17S hard alloy sheet, which were lower than fair prices based on the prices at which it was selling virgin aluminum ingot and the cost of fabricating such sheet.

Finding No. 286A.—Unless by the restrictive clause in the Kruttschnitt-Coleman agreement of 1910, mentioned in Finding of Fact No. 210, which was cancelled by the consent decree of June 7, 1912, the evidence does not show, nor is there basis for an inference, that Aluminum Company of America has ever (a) monopolized, or intended or attempted (except as found in Amended Finding of Fact No. 280), or contracted, or combined, or conspired to monopolize the production or sale of aluminum sheet, or (b) has ever contracted, or combined, or conspired to exclude others, or any one, from a fair opportunity to engage in the production or sale of aluminum sheet, or (c) has ever contracted, or combined, or conspired to exercise the power of fixing arbitrary or discriminatory or unreasonable prices of aluminum sheet, or (d) has ever entered, or intended or attempted to enter, into any agreement, or understanding, or contract, or combination, or conspiracy with others, or with anyone, to fix prices, or to allocate markets, or to restrict the production or sale of aluminum sheet.

Finding No. 389.—Speaking broadly and generally, Aluminum Company of America has been fair to its competitors and customers in the matter of selling prices. It has adhered to a practice of voluntarily reducing its selling prices under long-term contracts when there was a general price reduction on the commodity in question during the life of the contract. The net earnings of seven of its competitors in the fabrication of various aluminum products are summarized in Table 24 of the opinion of this court.

Finding No. 391.—Ever since prior to June 7, 1912 (the date of the consent decree), numerous metals and materials and numerous articles fabricated therefrom, including imported aluminum, secondary aluminum, market scrap aluminum, articles fabricated

in the United States by others from aluminum, articles fabricated in foreign countries from aluminum and imported into the United States, metals and materials other than aluminum from which have been fabricated in the United States articles marketed in the United States for uses identical with, or similar to, uses to which articles fabricated in the United States from aluminum were put, and articles fabricated from such metals or materials and marketed in the United States, have been in active competition in the United States with virgin aluminum and products made therefrom.

Finding No. 392.—The evidence does not show, nor is there basis for an inference, that since, at latest, June 7, 1912, Aluminum Company of America has ever exercised, or attempted to exercise, any power to fix or adopt, or that it has fixed or adopted, arbitrary or oppressive or unreasonable or unfair prices or unreasonable or unfair competitive practices in the manufacture or sale of, or in connection with, virgin aluminum ingot or products made therefrom, except as found in Amended Findings of Fact Nos. 257, 260, 280, and 286.

Finding No. 406.—It cannot be determined now whether it would be in the public interest to dissolve Aluminum Company of America, either vertically or horizontally.

Conclusion No. 29.—From February 2, 1909, the date of expiration of the Bradley patent, to August 14, 1940, the date of the close of the trial, Aluminum Company of America has at all times been the sole producer of virgin aluminum in the United States and has produced (under the circumstances set forth in Amended Finding of Fact No. 155) from about 68% to over 90% of the total aluminum, both domestic and imported, available in the aluminum ingot market in the United States and has thereby monopolized the market for aluminum ingot in the United States, in violation of Section 2 of the Sherman Act (Act of July 2, 1890).

Conclusion No. 31.—Since, at latest, June 7, 1912, the date of the consent decree, Aluminum Company of America has not entered, or intended or attempted to enter, into any agreement, understanding, combination, or conspiracy with anyone, or formed a partnership, or combined, or merged, or consolidated with anyone, designed (a) to monopolize or restrain the production or sale of virgin aluminum ingot, or (b) to exclude others, or any one, from a fair opportunity to engage in the production or sale of virgin aluminum ingot, or (c) to limit production of virgin aluminum ingot, or to fix prices therefor, or to allocate markets therefor, or (d) to prevent, suppress, or decrease competition in the production or sale of virgin aluminum ingot, or to hinder, prevent or suppress a competitor, or potential competitor, therein; nor has it

paid any sum of money, or extended any privilege to any such competitor, or potential competitor, in order to prevent competition, nor has it acquired in excess of its reasonable needs raw materials necessary in the commercial production of virgin aluminum ingot.

Conclusion No. 57.—From 1925 to 1932, Aluminum Company of America violated Section 1 of the Sherman Act (Act of July 2, 1890) by maintaining differentials between its selling prices of aluminum ingot (which were higher than fair prices), and its selling prices of certain gauges of the hard alloy, known as duralumin or 17S flat sheet (which were held at too low levels in view of the prices of ingot), at such levels as to prevent fabricators of such gauges of 17S flat sheet from manufacturing and selling the same at a reasonable profit.

Conclusion No. 58.—Aluminum Company of America has never (a) monopolized, or intended or attempted (except as found in Amended Finding of Fact No. 257), or contracted, or combined, or conspired to monopolize the production or sale of hard alloys of aluminum, or (b) contracted, or combined, or conspired to 26 exclude others, or any one, from a fair opportunity to produce or sell hard alloys of aluminum; or (c) contracted, or combined, or conspired to exercise the power of fixing arbitrary or discriminatory or unreasonable prices of hard alloys of aluminum, nor (d) entered, or intended or attempted to enter, into any agreement or understanding or contract or combination or conspiracy with others, or with any one, to fix prices, or to allocate markets, or to restrict the production or sale of hard alloys of aluminum.

Conclusion No. 60.—From 1925 to 1932, Aluminum Company of America violated Section 1 of the Sherman Act (Act of July 2, 1890) by maintaining differentials between its selling prices of aluminum ingot (which were higher than fair prices), and its selling prices of certain gauges of 2S and 3S sheet, both coiled and flat (which were held at too low levels in view of the prices of ingot), at such levels as to prevent fabricators of such gauges of 2S and 3S sheet, both coiled and flat, from manufacturing and selling the same at a reasonable profit.

Conclusion No. 61.—Unless by the restrictive clause in the Kruttschnitt-Coleman agreement of 1910, mentioned in Finding of Fact No. 210, which was cancelled by the consent decree of June 7, 1912, Aluminum Company of America has never (a) monopolized, or intended or attempted (except as found in Amended Finding of Fact No. 280), or contracted, or combined, or conspired to monopolize the production or sale of aluminum sheet, or (b) contracted, or combined, or conspired to exclude others, or any one, from a fair opportunity to engage in the production or sale of aluminum sheet, or (c) contracted, or combined, or conspired

to exercise the power of fixing arbitrary or discriminatory or unreasonable prices of aluminum sheet, or (d) entered, or intended or attempted to enter, into any agreement or understanding, or contract, or combination, or conspiracy with others, or with any one, to fix prices, or to allocate markets, or to restrict the production or sale of aluminum sheet.

Conclusion No. 86.—Sales by Aluminum Company of America of aluminum ingot for the fabrication of aluminum sheet and aluminum alloy sheet at prices which were higher than fair prices and sales by Aluminum Company of America of certain gauges of aluminum sheet and certain gauges of aluminum alloy sheet,

both coiled and flat, at prices which were below its selling prices for aluminum ingot, plus the cost of manufacturing and selling such sheet, thus preventing fabricators of such gauges of sheet from manufacturing and selling the same at a reasonable profit, although not continued after 1932, require that it be enjoined from selling aluminum ingot, of which it had a monopoly on August 14, 1940, for the fabrication of sheet at higher than fair prices, and from selling sheet, both aluminum sheet and aluminum alloy sheet, at prices below its selling prices for aluminum ingot, plus the cost of manufacturing and selling such sheet, because of the possibility that such practices may in the future commend themselves to those then in control.

Conclusion No. 82.—From 1925 to 1932 Aluminum Company of America fixed its selling prices of aluminum ingot at higher than fair prices, but the evidence does not show, nor is there basis for an inference, that at any other time it did so, or that it ever charged arbitrary, or discriminatory, or oppressive, or unreasonable prices for any aluminum product or any material from which aluminum is made.

Conclusion No. 84.—Judgment should be entered dismissing the amended petition on the merits as to the defendants, Aluminum Goods Manufacturing Company; The Aluminum Cooking Utensil Company; Aluminum Manufactures, Incorporated; Aluminum Ore Company; Aluminum Seal Company; Alcoa Power Company, Limited; Alton and Southern Railroad; Bauxite and Northern Railway Company; Cedar Rapids Transmission Company, Limited; Knoxville Power Company; Louisiana Terminal Company; Massena Securities Corporation; The Massena Terminal Railroad Company; Nantahala Power and Light Company; Alcoa Steamship Company, Inc. (formerly Ocean Dominion Steamship Company); Alcoa Mining Company (formerly The Republic Mining and Manufacturing Company); The St. Lawrence River Power Company; St. Louis and Ohio River Railroad; Suriname's Bauxite Maatschappij; The Coalesced Company; The Aloxite Corporation; Ailza Mellon Bruce; Paul Mellon; David K. E.

Bruce and Donald D. Shepard, as Executors of Andrew W. Mellon, deceased; Paul Mellon; Union Trust Company of Pittsburgh.

Richard K. Mellon, Jennie King Mellon and Sarah Mellon
28 Scaife, as Executors of Richard B. Mellon, deceased; Nina L. Neilson, as Executrix of Winthrop C. Neilson, deceased; and Sarah Mellon Scaife.

Conclusion No. 85.—Judgment should be entered adjudging that the defendants, Aluminum Company of America; Carolina Aluminum Company (a wholly owned subsidiary of Aluminum Company of America); and George H. Clapp; Arthur V. Davis; George R. Gibbons; and Robert E. Withers, officers and directors of Aluminum Company of America, monopolized interstate trade and commerce in the United States in aluminum ingot from February 2, 1909, the end of the patent monopoly of Aluminum Company of America, to the close of the trial on August 14, 1940 (in the case of Carolina Aluminum Company only from 1912 to August 14, 1940), by causing Aluminum Company of America, as the sole producer of virgin aluminum ingot in the United States, to maintain its control of the aluminum ingot market in the United States, by producing annually (under the circumstances set forth in Amended Finding of Fact No. 155) from about 68% to over 90% of the total aluminum ingot, both foreign and domestic, available for sale in that market, in violation of Section 2 of the Sherman Anti-Trust Act; and further adjudging that the defendants, David K. E. Bruce; Safford K. Colby; Edward K. Davis; J. J. Demskie; Edwin S. Fickes; C. B. Fox; Roy A. Hunt; J. R. D. Huston; C. L. Lycette; Richard K. Mellon; Charles H. Moritz; George J. Stanley; Paul J. Urquhart; and Irving W. Wilson, within the respective periods of time during which they were officers, directors, or both, of Aluminum Company of America, participated in such monopolization by the same means in violation of Section 2 of the Sherman Anti-Trust Act.

Conclusion No. 86.—Judgment should be entered adjudging that the defendants, Aluminum Company of America; Carolina Aluminum Company and The United States Aluminum Company (wholly owned subsidiaries of Aluminum Company of America); and George H. Clapp; Arthur V. Davis; J. J. Demskie; Edwin S. Fickes; George R. Gibbons; Roy A. Hunt; and Robert E. Withers, officers and directors of Aluminum Company of America, engaged, from 1925 to 1932, in a so-called "price squeeze," by holding
29 aluminum ingot at prices higher than fair prices and by holding certain gauges of aluminum sheet and aluminum alloy sheet at prices too low in view of the prices of ingot, and thereby reducing the differentials between the prices of aluminum ingot and the prices of certain gauges of aluminum sheet and aluminum alloy sheet to such an extent that independent fabri-

cators of such sheet could not operate at a profit, in violation of Section I of the Sherman Anti-Trust Act; and further adjudging that the defendants, David K. E. Bruce; Safford K. Colby; Edward K. Davis; C. B. Fox; J. R. D. Huston; C. L. Lycette; Richard K. Mellon; Charles H. Moritz; George J. Stanley; Paul J. Urquhart; and Irving W. Wilson, within the respective periods of time during which they were officers, directors, or both, of Aluminum Company of America, participated in the said "price squeeze" by the same means, in violation of Section I of the Sherman Anti-Trust Act; and enjoining the defendants, Aluminum Company of America, Carolina Aluminum Company, and The United States Aluminum Company, and their successors, officers, directors and agents from again engaging in such "price squeeze."

7. The defendants, Aluminum Company of America; Carolina Aluminum Company, a wholly owned subsidiary of Aluminum Company of America; George H. Clapp; Arthur V. Davis; George R. Gibbons; and Robert E. Withers, monopolized interstate trade and commerce in the United States in aluminum ingot from February 2, 1909, the end of the patent monopoly of Aluminum Company of America, to the close of the trial on August 14, 1940 (in the case of Carolina Aluminum Company only from 1912 to August 14, 1940), by causing Aluminum Company of America, as the sole producer of virgin aluminum ingot in the United States, to maintain its control of the aluminum ingot market in the United States, by producing annually (under the circumstances set forth in Amended Finding of Fact No. 155) from about 68 to over 90% of the total aluminum ingot, both foreign and domestic, available for sale in that market, in violation of Section 2 of the Sherman Anti-Trust Act (Act of July 2, 1890); and the defendants, David K. E. Bruce; Safford K. Colby; Edward K. Davis;

J. J. Demskie; Edwin S. Fickes; C. B. Fox; Roy A. Hunt; J. R. D. Huston; C. L. Lycette; Richard K. Mellon; Charles H. Moritz; George J. Stanley; Paul J. Urquhart; and Irving W. Wilson, within the respective periods of time during which they were officers, or directors, or both, of Aluminum Company of America, viz:

David K. E. Bruce from April 16, 1931, to August 14, 1940,
Safford K. Colby from January 8, 1931, to August 14, 1940,
Edward K. Davis from February 19, 1919, to June 4, 1928,
J. J. Demskie from April 1, 1926, to August 14, 1940,
Edwin S. Fickes from February 19, 1919, to August 14, 1940,
C. B. Fox from April 16, 1931, to August 14, 1940,
Roy A. Hunt from February 8, 1915, to August 14, 1940,
J. R. D. Huston from January 8, 1931, to August 14, 1940,
C. L. Lycette from January 8, 1931, to August 14, 1940,
Richard K. Mellon from April 11, 1929, to August 14, 1940,

Charles H. Moritz from February 19, 1919, to April 11, 1929,
George J. Stanley from January 8, 1931, to August 14, 1940,
Paul J. Urquhart from January 8, 1931, to August 14, 1940, and
Irving W. Wilson from January 8, 1931, to August 14, 1940,

participated in the monopolization of interstate trade and commerce in the United States in aluminum ingot by the same means, in violation of said Section 2 of the Sherman Anti-Trust Act.

8. The defendants, Aluminum Company of America; Carolina Aluminum Company; The United States Aluminum Company; George H. Clapp; Arthur Y. Davis; J. J. Demskie; Edwin S. Fickes; George R. Gibbons; Roy A. Hunt, and Robert E. Withers, engaged, from 1925 to 1932, in a so-called "price squeeze," by holding aluminum ingot at prices higher
31 than fair prices and by holding certain gauges of aluminum sheet and aluminum alloy sheet at prices too low, in view of the prices of ingot, and thereby reducing the differentials between the prices of aluminum ingot and the prices of certain gauges of aluminum sheet and aluminum alloy sheet to such an extent that independent fabricators of such sheet could not operate at a profit, in violation of Section 1 of the Sherman Anti-Trust Act (Act of July 2, 1890); and the defendants, David K. E. Bruce; Safford K. Colby; Edward K. Davis; C. B. Fox; J. R. D. Huston; C. L. Lycette; Richard K. Mellon; Charles H. Moritz; George J. Stanley; Paul J. Urquhart, and Irving W. Wilson, within the respective periods of time between 1925 and 1932 during which they were officers, or directors, or both, of Aluminum Company of America, viz:

David K. E. Bruce from April 16, 1931, to December 31, 1932,
Safford K. Colby from January 8, 1931, to December 31, 1932,
Edward K. Davis from January 1, 1925, to June 4, 1938,
C. B. Fox from April 16, 1931, to December 31, 1932,
J. R. D. Huston from January 8, 1931, to December 31, 1932,
C. L. Lycette from January 8, 1931, to December 31, 1932,
Richard K. Mellon from April 11, 1929, to December 31, 1932,
Charles H. Moritz from January 1, 1925, to April 11, 1929,
George J. Stanley from January 8, 1931, to December 31, 1932,
Paul J. Urquhart from January 8, 1931, to December 31, 1932,
and

Irving W. Wilson from January 8, 1931, to December 31, 1932, participated in the said "price squeeze" by the same means, in violation of said Section 1 of the Sherman Anti-Trust Act.

9. The defendants, Aluminum Company of America,
32 Carolina Aluminum Company and the United States Aluminum Company, and the successors, officers, directors, and agents of each of said companies be, and they hereby are, enjoined and restrained from selling aluminum ingot for the fabrication of

aluminum sheet or aluminum alloy sheet at higher than fair prices, if the fabricator of such sheet is thereby prevented from fabricating and selling aluminum sheet or aluminum alloy sheet at a reasonable profit, provided that such fabricator is efficient, well equipped, and otherwise able to fabricate and sell such sheet on a fully competitive basis; and further enjoined and restrained from selling aluminum sheet and aluminum alloy sheet, both coiled and flat, at prices below its selling prices for aluminum ingot, plus the cost of manufacturing and selling such sheet. In the event that the monopoly of Aluminum Company of America in aluminum ingot in the United States, found in Paragraph 7 of this judgment to exist, shall be terminated as the result of its dissolution, or partial dissolution, or as the result of the sale of one or more of its aluminum-producing plants, whether voluntary or required by a future order of this court, or as the result of the adoption by the Surplus Property Administrator, or other authorized agency, of a plan for aluminum industry as a whole, which shall be approved by this court and accepted and carried out by Aluminum Company of America, to the extent that it has a part in such plan, or, in the absence of the adoption by the Surplus Property Administrator, or other authorized agency, of a plan for the aluminum industry as a whole, as the result of the disposal, through sale or lease to others than the Aluminum Company of America of government-owned aluminum producing plants, which shall be found by this court to be sufficient to restore competitive conditions in such industry, or as the result of any other changes in the aluminum industry which shall be found by this court to be sufficient to restore competitive conditions in such industry, the injunction contained in this Paragraph shall thereupon cease and determine.

10. The amended petition herein is hereby dismissed on the merits as to the defendants, Aluminum Company of America; Carolina Aluminum Company; The United States Aluminum

Company; David K. E. Bruce; George H. Clapp; Safford

33 K. Colby; Arthur V. Davis; J. J. Demskie; Edwin S.

Fickes; C. B. Fox; George R. Gibbons; Roy A. Hunt;

J. R. D. Huston; C. L. Lycette; Richard K. Mellon; Charles H.

Moritz; George J. Stanley; Paul J. Urquhart; Irving W. Wilson;

and Robert E. Withers, with respect to all claims alleged against

them, or any of them therein, except the claims sustained in Para-

graphs 7 and 8 herein; and also as to the defendant, Edward K.

Davis, with respect to all claims alleged therein against him

as an officer, director, or stockholder of Aluminum Company of

America, or any of its subsidiaries, except the claims sustained in

Paragraphs 7 and 8 herein.

11. The defendant, Aluminum Company of America, for the purpose of securing compliance with the provisions of Paragraph

9 of this judgment, and for no other purpose, shall permit, subject to any legally established privilege, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or an Assistant Attorney General of the United States, and on reasonable written notice to Aluminum Company of America, given at its principal office, to have access, during its office hours, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession, or under its control, relating to the matters contained in said Paragraph, and to interview its officers and employees, who may have counsel present, without restraint or interference and subject to their reasonable convenience, with reference to such matters, provided, however, that no information so obtained shall be divulged to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings, to which the United States is a party, instituted for the purpose of securing compliance with the provisions of said paragraph, or as may be otherwise required or permitted by law.

12. To the end that the said mandate and opinion of the United States Circuit Court of Appeals for the Second Circuit may be carried out, this court reserves and retains jurisdiction of this cause for such time as may be necessary after the Surplus Property

Administration appointed under the Act of September 18, 1945, or other authorized administrative agency, shall have proposed a plan or program for the disposition of the aluminum plants and facilities owned by the petitioner or owned by any Government agency, in accordance with the requirements of Section 19 of the Surplus Property Act of 1944, or of other applicable statutes, in order that the Attorney General may institute at the foot thereof such proceedings, either for the dissolution or the partial dissolution of Aluminum Company of America, or for the enforcement of such plan or program, if the same shall establish competitive conditions in the aluminum industry in the United States, or for such other relief as may seem appropriate and necessary to establish competitive conditions in the aluminum industry in the United States, in the event that such plan or program should not do so; and for the purpose of enabling Aluminum Company to apply to this court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States. Jurisdiction of this cause is also retained for the purpose of enabling any of the parties hereto, or their successors, except those as to whom the amended petition has been dismissed by Paragraphs 2, 3, and 4 of this judgment, to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or carrying out of this judgment, for the modification thereof, for the

enforcement of compliance therewith, and for the punishment of violations thereof.

13. None of the parties to this judgment shall recover costs.

FRANCIS G. CAFFEY,
United States District Judge.

Judgment Rendered.

WILLIAM V. CONNELL, *Clerk.*

APRIL 23, 1946.

35

Appendix D to petition

In the District Court of the United States for the Southern
District of New York

Equity No. 85-73

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS

PETITION OF ALUMINUM COMPANY OF AMERICA FOR A JUDGMENT THAT
IT NO LONGER HAS A MONOPOLY OF THE ALUMINUM INGOT MARKET
IN THE UNITED STATES

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
SMITH, BUCHANAN & INGERSOLL,
1025 Union Trust Building,
Pittsburgh, Pennsylvania.

CHARLES E. HUGHES, Jr.,
L. HOMER SURRECK,
HUGHES, HUBBARD & EWING,
1 Wall Street, New York, New York,
Solicitors for Aluminum Company America.

37 In the District Court of the United States for the Southern District of New York

Equity No. 85-73

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS

PETITION OF ALUMINUM COMPANY OF AMERICA FOR A JUDGMENT THAT IT NO LONGER HAS A MONOPOLY OF THE ALUMINUM INGOT MARKET IN THE UNITED STATES

To the Honorable, the Judges of said Court :

Aluminum Company of America, defendant in the above-captioned case, proceeding pursuant to paragraph 12 of the judgment of this Court dated April 23, 1946, respectfully represents :

Reynolds aluminum plants

1. Since August 14, 1940 (the date on which the taking of testimony in this cause was concluded), Reynolds Metals Company, a corporation of the State of Delaware, has built, owns, and operates plants for the production of alumina and the smelting of aluminum, the location, function, approximate cost, annual capacity, and the date of initial operation of each being as follows :

Location	Function	Approximate cost	Approximate annual capacity in pounds	Approximate date of initial operation
Listerhill, Ala.	Manufacture of alumina	\$15, 993, 000	208, 000, 000	May 1941.
Listerhill, Ala.	Smelting of aluminum		99, 750, 000	May 1941.
Longview, Wash.	Smelting of aluminum	6, 509, 000	61, 960, 000	September 1941.
Total aluminum smelting.		22, 502, 000	161, 710, 000	

38. Power for the operation of the Listerhill and Longview aluminum smelting plants is obtained from the Government-owned and operated power plants of the Tennessee Valley Authority and Bonneville Authority, respectively.

2. In November 1945, Reynolds Metals Company purchased from Aluminum Products Company its plant for the fabrication of aluminum sheet located at LaGrange, Illinois, and has since operated it. It owns and operates numerous other aluminum fabricating plants acquired both prior to and since August 14, 1940. It has also leased or purchased from the United States Government still other aluminum fabricating plants, as more fully detailed in paragraph 9 hereof.

Government aluminum plants

3. Since August 14, 1940, the United States Government, acting through appropriate Government instrumentalities, has caused plants and facilities to be built for the manufacture of alumina, the smelting of aluminum, and the fabrication of aluminum products, at a total cost of approximately \$681,900,000. Ownership of all such plants and facilities were retained by the United States Government or an instrumentality thereof through the year 1945. Of these, Aluminum Company of America built for the United States Government approximately \$450,000,000 of such plants, all without fee or profit to the Company and with no option or other right to purchase any of such properties. Among the plants owned by the United States Government were nine for the smelting of aluminum, two for the manufacture of alumina, and three for the fabrication of aluminum sheet. The location, function, approximate cost, annual capacity, and date of initial operations of said last-mentioned plants are as follows:

Location	Purpose	Approximate cost	Approximate annual capacity in pounds	Approximate date of initial operation
Spokane, Wash. (Meade plant)	Smelting of aluminum	\$28,302,380	210,000,000	May 14, 1942.
Troutdale, Oreg.	do	19,386,643	144,000,000	May 17, 1942.
Mansena, N. Y. (St. Lawrence plant)	do	19,932,516	106,000,000	May 27, 1942.
Los Angeles, Calif.	do	24,492,532	180,000,000	July 3, 1942.
Jones Mills, Ark.	do	20,332,940	144,000,000	July 31, 1942.
Tacoma, Wash.	do	6,299,067	41,500,000	September 1942.
Queens, N. Y.	do	32,822,227	200,000,000	Feb. 24, 1943.
Riverbank, Calif.	do	11,825,784	148,000,000	May 13, 1943.
Burlington, N. J.	do	14,715,030	108,000,000	May 16, 1943.
Total		184,081,020	1,337,000,000	
Hurricane Creek, Ark.	Manufacture of alumina	\$6,346,677	1,000,000,000	July 20, 1942.
Baton Rouge, La.	do	26,362,671	1,000,000,000	Feb. 18, 1943.
Total		32,711,348	2,000,000,000	
Listerhill, Ala.	Aluminum sheet fabrication	\$6,747,047	75,000,000	November 1941.
Trentwood (Spokane), Wash.	do	48,876,086	280,000,000	November 1942.
Chicago, Ill. (McCook plant)	do	45,546,162	285,000,000	June 1943.
Total		101,169,295	640,000,000	

The foregoing plants, as well as those listed in paragraph 1 hereof, will be identified hereinafter by their location and function, as for example, the Spokane aluminum smelting plant, the Hurricane Creek alumina plant, or the Listerhill sheet mill. Each of the above-listed plants listed in this paragraph was built for the United States Government by Aluminum Company of America except those located at Tacoma, Trentwood, and Listerhill. Each of the above-listed plants (including those located at Tacoma,

Trentwood, and Listerhill) is at least as efficient in equipment and design as the plants for the same purpose owned and operated by Aluminum Company of America.

War-time operation

4. The United States Government, acting through its wholly-owned instrumentality, Defense Plant Corporation, leased each of the plants listed in paragraph 3 hereof. (with the exception of those located at Tacoma and Listerhill) to Aluminum Company of America for wartime operation under rental terms which returned to the United States Government 85 per cent of the profits arising from the operation of each plant for the manufacture of alumina and the smelting of aluminum and an annual rental based on 10 per cent of the total cost of the plants and facilities used by Aluminum Company of America in the fabrication of aluminum, such latter rentals being predicated on operations at the rate of 80 per cent or more of capacity. The total return to the Government from said leases to Aluminum Company of America was in excess of \$50,000,000. All of the leases to Aluminum Company of America were cancelled either by Defense Plant Corporation or Reconstruction Finance Corporation (which succeeded Defense Plant Corporation in the control of the Government aluminum plants), the last of the leases on plants for the manufacture of alumina and the smelting of aluminum being terminated as of October 31, 1945; and the last of the leases on plants for the fabrication of aluminum being terminated as of November 30, 1945.

5. The Tacoma aluminum smelting plant was leased by Defense Plant Corporation to Olin Corporation, and operated by the latter, from the time it was built until on or about November 17, 1945, when the lease was terminated and the plant closed. Olin Corporation is no longer operating as a smelter of aluminum.

6. The Listerhill aluminum sheet mill was leased by Defense Plant Corporation to Reynolds Metals Company, and operated by the latter, from and after the time it was built until February 7, 1946, when Reynolds Metals Company purchased (and has since operated) the said plant.

Government disposal program

7. The surplus property disposal agencies of the United States Government have been, successively, the Surplus Property Board, the Surplus Property Administrator, the War Assets Corporation, and the War Assets Administration. The disposal program of these agencies has been one designed to create maximum competition with Aluminum Company of America, as de-

tailed in a report by the Surplus Property Board to The Congress under date of September 21, 1945. The said report, setting forth the competitive disposal program, was submitted to the Congress pursuant to the mandate of the Surplus Property Act of 1944, c. 479, 58 Stat. 765, Section 19.50 U. S. C. § 1628. It became the approved competitive disposal program of the United States Government on December 20, 1945 (60 days after submission to The Congress) by operation of The Surplus Property Act, as amended (and will be hereinafter referred to as the approved competitive disposal program). A copy of the approved competitive disposal program, as set forth at pages 50-53 of the printed copy of the aforementioned report, is attached hereto and made a part hereof as Exhibit 1.

8. All disposals of Government-owned plants in the aluminum industry have been made under the approved competitive disposal program. On February 12, 1947, the War Assets Administration filed with The Congress a first supplementary report on the disposal of aluminum plants and facilities under the said program, a copy of which report is attached hereto and made a part hereof as Exhibit 2 for the purpose of showing disposals to date, the terms thereof, the cost, capacity and location of all Government-owned aluminum plants, and the extent to which competitors of Aluminum Company of America in the aluminum ingot market have become integrated as a result of the approved competitive disposal program. In the application of the said program the successive governmental disposal agencies, advised and guided by the Department of Justice, have proceeded as follows:

(a) No plants for the manufacture of alumina, the smelting of aluminum, or the fabrication of aluminum sheet have been sold, leased, or otherwise disposed of to Aluminum Company of America.

(b) The Government-owned Hurricane Creek alumina plant was leased to Reynolds Metals Company on terms which require the lessee to sell available alumina to any operator of a Government-owned aluminum smelting plant at cost plus six percent or \$40.00 a short ton, whichever is lower; and in order to facilitate this objective, the Surplus Property Administrator obtained from Aluminum Company of America a commitment to grant free licenses under its patents for the production of alumina from bauxite at the Hurricane Creek alumina plant;

(c) Disposal (with the exception of the Tacoma smelting plant and the Listerhill sheet mill, which were sold) was, in each instance, (i) by lease for a term of five years, with a right to renew for two additional years, (ii) at rentals starting no higher than the normal rate of depreciation of that portion of the property used and reaching a maximum which is no more than such depreci-

ation plus interest on the Government investment, (iii) with an option to purchase at approximately 70 percent of the cost of the leased plant, subject to adjustment for depreciation and interest, and (iv) subject to the obligation of the Government to assume the cost of changing the plant from a stand-by condition to an operating condition; all of which terms are hereinafter referred to as the special terms of lease; and

(d) Disposals of Government-owned plants for the manufacture of alumina, the smelting of aluminum, and the fabrication of aluminum sheet have been made to only two groups of operators, in order to place such operators in a more integrated position and to put them in possession of plants and facilities with capacities for the manufacture of alumina and the smelting and fabrication of aluminum as well balanced as possible. In pursuance of this policy, disposals were made to Reynolds Metals Company, and two corporations controlled by the Henry J. Kaiser interests as more fully detailed in paragraphs 9 and 10 hereof. A more favorable financial offer of Asarco Aluminum Company (a newly formed corporation, the stock of which was 51 percent owned by American Smelting and Refining Company, a corporation of the State of New Jersey, 27 percent by the Swiss Aluminum Company, a Swiss corporation, and 22 percent by the N. V. Billiton Manufacturing Company, a Netherlands corporation), to lease the Troutdale aluminum smelting plant and the Baton Rouge alumina plant was rejected, as more fully set forth in a published statement of War Assets Administration which is attached hereto and made a part hereof as Exhibit 3.

43. Reynolds acquisitions

9. (a) *Listerhill aluminum sheet mill.*—On or about February 7, 1946, War Assets Corporation, acting as the surplus property disposal agency of the United States Government, sold the Listerhill aluminum sheet mill to Reynolds Metals Company for \$7,000,000 and the said Company has been in possession of, and has operated, the said plant at all times since the above-mentioned date.

(b) *Hurricane Creek alumina plant.*—On or about March 7, 1946, War Assets Corporation, acting as aforesaid, accepted the offer of Reynolds Metals Company to lease the Hurricane Creek alumina plant on the special terms of lease. Operation of the plant by Reynolds Metals Company began on or about April 15, 1946, and the term of the leasehold runs from that date. The lease terms provide for rentals fixed on the basis of 25 percent of plant capacity, on a sliding scale from 4 to 8 percent of an agreed fair value of the above-mentioned portion of said plant, with guaran-

teed minimum rentals starting at \$273,000 and progressing to a peak of \$546,000.

(c) *Jones Mills aluminum smelting plant.*—On or about March 7, 1946, War Assets Corporation, acting as aforesaid, accepted the offer of Reynolds Metals Company to lease the Jones Mills aluminum smelting plant on the special terms of lease. Operation of the plant by the Reynolds Company began on or about May 22, 1946, and the term of the leasehold runs from that date. Two of the four pot lines of the plant were excluded from the agreement to lease because power to operate these lines was not then available. The lease terms provide for rentals on an upward graduated scale ranging from 4 to 8 percent of an agreed fair value of one-half of the plant, said rentals increasing progressively from \$534,800 for the first year to \$1,069,600 for the fifth year.

(d) *Chicago sheet mill.*—On or about February 28, 1946, War Assets Corporation, acting as aforesaid, accepted the offer of Reynolds Metals Company to lease the Chicago sheet mill on the special terms of lease. Operation of the plant by Reynolds Metals Company began on June 1, 1946, and the term of the leasehold runs from that date. The lease terms provide for
44 rentals equal to 5 percent of net sales of sheet rolled at said plant, with minimums graduated upward progressively from \$750,000 for the first year to \$2,482,312 for the fifth year. The latter figure is equal to 8 percent of the reproduction cost of the entire plant as estimated by War Assets Administration.

(e) *Troutdale aluminum smelting plant.*—On or about May 23, 1946, War Assets Administration, acting as the surplus property disposal agency of the United States, accepted the offer of Reynolds Metals Company to lease the Troutdale aluminum smelting plant on the special terms of lease. Operation of the plant by Reynolds Metals Company began on September 28, 1946, and the term of the leasehold runs from that date. The lease terms provide for rentals on a graduated scale, ranging progressively from 4 to 8 percent of an agreed fair value of the plant, which will amount to \$529,400 in the first year, and increase progressively to \$1,058,200 for the fifth and subsequent years.

(f) Public announcements of the aforementioned disposals by lease and their principal terms were made by the appropriate Governmental disposal agencies, copies of which announcements are attached hereto and made a part hereof as Exhibits 3, 4, and 5.

(g) Each of the aforementioned plants except the Listerhill sheet mill was built for the Government by Aluminum Company of America and has equipment and facilities of the same type as are installed in the most modern plants of Aluminum Company of America; each (including the Listerhill sheet mill) is at least

as efficient in equipment and design as the plants for the same purpose which are owned and operated by Aluminum Company of America. Power is available at low rates at the Jones Mills and Troutdale aluminum smelting plants, with low-cost natural gas as the fuel at the former plant and hydro-electric power supplied by the Bonneville Power Authority at the latter plant.

(h) At present, Reynolds Metals Company is negotiating with War Assets Administration, acting as aforementioned, for the lease of the two pot lines at the Jones Mills aluminum reduction plant which are excluded from the present agreement to

45 lease. War Assets Administration is willing to lease the pot lines on the same basis as that on which the first two were leased to the Reynolds Company. The Arkansas Power and Light Company has offered the Reynolds Company sufficient firm electrical power to run the two additional pot lines, at a low rate, subject to the Arkansas Power & Light Company being the successful bidder for the Lake Catherine steam plant which is being offered for sale by War Assets Administration. The said Power and Light Company has offered the Reynolds Company an interim quantity of firm electrical power from its existing sources of supply pending the availability of power from the adjacent Lake Catherine steam plant. Furthermore, natural gas is available in quantities sufficient to generate all the power needed to operate all four pot lines at the Jones Mills smelting plant. It can be made available at the low cost of approximately 3 mills per kilowatt hour of direct current smelting power and the necessary gas engines and electrical generators can be installed in approximately 18 months under present-day conditions.

(i) In addition to the plants for the manufacture of alumina, the smelting of aluminum and the fabrication of aluminum sheet heretofore enumerated in this paragraph 9, War Assets Administration or a predecessor agency has sold or leased (on the special terms of lease) Government-owned aluminum plants to Reynolds Metals Company as follows: (i) It has a plant located at Louisville, Kentucky, with an annual capacity to produce 2,400,000 pounds of aluminum forgings. (ii) It has leased a plant located at Newark, Ohio, with an annual capacity to produce 300,000,000 pounds of aluminum rolled rod and bar. (iii) It has leased a plant located at Grand Rapids, Michigan, with an annual capacity to produce 10,800,000 pounds of aluminum extrusions. (iv) It has leased a plant located at Phoenix, Arizona, with an annual capacity to produce 60,700,000 pounds of aluminum extrusions and 15,500,000 pounds of aluminum tubing.

(j) As a consequence of the construction, purchase, and lease of plants as detailed in paragraphs 1 and 2 and in this paragraph 9, coupled with the operation of plants acquired both prior to and

subsequent to August 14, 1940, Reynolds Metals Company is the operator of plants with a capacity to produce annually approximately 1,755,000,000 pounds of alumina, 377,730,000 pounds of aluminum ingot (exclusive of that part of the capacity at the Jones Mills aluminum smelting plant which the Reynolds Company is now negotiating to operate), 468,000,000 pounds of aluminum sheet and 522,850,000 pounds of other fabricated aluminum products.

Kaiser acquisitions

10. (a) Permanente Metals Corporation, Kaiser-Frazer Corporation, a corporation of the State of Nevada, and Kaiser Cargo, Inc., a corporation of the State of California, are each affiliated with and controlled by Henry J. Kaiser and Company, a corporation of the State of Nevada (and are hereinafter sometimes referred to as the Kaiser interests).

(b) *Spokane aluminum smelting plant.*—On or about May 6, 1946, War Assets Administration, acting as the surplus property disposal agency of the United States Government, accepted the offer of Permanente Metals Corporation (made by Kaiser Cargo, Inc., and assigned to Permanente Corporation) to lease the Spokane aluminum smelting plant on the special terms of lease. Operation of the plant by Permanente Corporation began on or about July 17, 1946; but the term of the leasehold runs from July 1, 1946. The lease terms are based upon a standard rate per pot line, increasing progressively from \$104,000 per pot line for the first year to \$208,000 for the fifth and successive years. These rentals were computed on the basis of attaining a maximum rental in the fifth year equal to 8 percent of 70 percent of the actual plant cost of \$23,202,380, beginning with 4 percent for the first year and increasing one percent each year. War Assets Administration has already placed all six pot lines in operating condition at the request of Permanente Corporation.

(c) *Trentwood aluminum sheet mill.*—On or about May 9, 1946, War Assets Administration, acting as aforesaid, accepted the offer of Kaiser-Frazer Corporation to lease the Trentwood (Spokane) aluminum sheet mill on the special terms of lease. Operation of the plant by Kaiser-Frazer Corporation began on or about July 1, 1946, and the term of the leasehold runs from that date. The lease terms provide for a first year rental of \$250,000, or 5 percent of net sales of sheet rolled at this mill, whichever is higher, and the minimum rentals are graduated upward to a peak of \$2,887,000 for the fifth and successive years. An offer of Reynolds Metals Company to buy the plant for \$18,000,000 was rejected because of competitive considerations.

(d) *Baton Rouge alumina plant.*—On or about August 9, 1946, War Assets Administration, acting as aforementioned, accepted

the offer of Permanente Metals Corporation (made by Kaiser Cargo, Inc., and assigned to Permanente Corporation) to lease the Baton Rouge alumina plant on the special terms of lease. Operation of the plant by Permanente Corporation began on or about November 1, 1946, and the term of the leasehold runs from that date. Rentals, computed on an upward sliding scale, are based on the value of 25 percent of plant capacity, computed at 70 percent of the cost of the plant, but are to be increased proportionately if the plant is operated at more than 25 percent of capacity. The lease terms provide for a guaranteed annual minimum rental beginning at \$126,500 for the first year and graduating to \$252,900 for the fifth and successive years.

(e) *Tacoma aluminum smelting plant.*—On or about November 8, 1946, War Assets Administration, acting as aforementioned, sold the Tacoma aluminum smelting plant to Permanente Metals Corporation for \$3,000,000. The said corporation took possession of the plant at once and expects to have it in operation on or about May 15, 1947.

(f) The appropriate Government disposal agencies have made public announcements of each of the aforementioned disposals and of the principal terms thereof; copies of which announcements are attached hereto and made a part hereof as Exhibits 3, 6 and 7, respectively.

(g) The aforementioned sale and agreements to lease place the Kaiser interests in possession of plants with a capacity to produce annually approximately 1,000,000,000 pounds of alumina, 257,500,000 pounds of aluminum ingot and 288,000,000 pounds of aluminum sheet.

48 (h) Each of the four aforementioned plants has equipment and facilities of the same type as are installed in the most modern plants of Aluminum Company of America (with the exception of the Tacoma aluminum smelting plant which is thoroughly modern and efficient but provided with somewhat different facilities); each (including the Tacoma plant) is at least as efficient in equipment and design as the plants for the same purpose which are owned and operated by Aluminum Company of America. Power from the Bonneville Power Authority is available at low rates to the aluminum smelting plants at both Spokane and Tacoma and to the Trentwood sheet mill.

Other disposals

11. War Assets Administration, acting as aforesaid, is now negotiating with Asarco Aluminum Company (identified in paragraph 8 hereof) for the lease of the Los Angeles aluminum smelting plant, which is more fully described in paragraph 3 hereof.

The negotiations are predicated upon the operation of the plant at 40 percent of its capacity.

Cooperation of Aluminum Company of America

12. Aluminum Company of America has cooperated with the program of the successive disposal agencies of the United States Government for the disposition of Government-owned plants for the manufacture of alumina and the smelting and fabrication of aluminum in the following respects, among others:

(a) Aluminum Company of America accepted cancellation at various dates in 1945 of all its leases for the war-time operation of Government-owned plants for the manufacture of alumina and the smelting and fabrication of aluminum, thereby freeing such plants for immediate disposition to others.

(b) On December 27, 1945, at a time when it was uncertain whether the Government could lease or sell its Hurricane Creek alumina plant to anyone else on a basis which would assure the availability of alumina at competitive prices to the operators of any or all Government-owned aluminum smelting plants, Aluminum Company of America offered to lease or purchase 49 the Hurricane Creek alumina plant and to operate it on a basis which would guarantee to the Government the availability of alumina at competitive prices to anyone for the manufacture of aluminum. A copy of this offer is attached hereto and made a part hereof as Exhibit 8.

(c) On January 10, 1946, at the request of the Surplus Property Administrator and the Department of Justice, Aluminum Company of America offered Reconstruction Finance Corporation a royalty-free license to use the patents of Aluminum Company of America in the production of alumina from bauxite at its Hurricane Creek alumina plant, with the right to sublicense at that plant, thereby enabling the operator of the Hurricane Creek alumina plant to make substantial savings in the manufacture of alumina. The offer was accepted. Copies of the correspondence, whereby this license was granted and accepted are attached hereto and made a part hereof as part of Exhibit 4. This license agreement enabled Reconstruction Finance Corporation to lease the Hurricane Creek alumina plant to Reynolds Metals Company (announcement of which was made in Exhibit 4 simultaneously with announcement of the agreement to grant the royalty-free patent license) on a basis which both enables and requires Reynolds Metals Company to sell alumina to the operators of other Government-owned aluminum smelting plants at its cost plus six per cent or \$40 a short ton, whichever is lower (which compares with a prevailing market price of \$50.00 a short ton during the last war). The productive capacity of the Hurricane Creek alumina plant

is sufficient to manufacture all of the alumina which can be used by Reynolds Metals Company in its two privately-owned aluminum smelting plants at Listerhill and Longview and by the lessees, including itself, of the Government-owned aluminum smelting plants at Jones Mills, Spokane, and Troutdale, with a considerable reserve capacity available for others. The purpose, and the desired effect of the lease of the Hurricane Creek alumina plant to Reynolds Metals Company, which was materially facilitated by the patent licenses of Aluminum Company of America, was to enable others to engage in the smelting of aluminum without the necessity of assuring themselves ownership of bauxite deposits or alumina producing facilities.

(d) On August 26, 1946, at the request of War Assets Administration and in confirmation of an understanding reached on August 23, 1946, Aluminum Company of America offered said War Assets Administration royalty-free licenses to use the patents of Aluminum Company of America in the production of alumina from bauxite at its Baton Rouge alumina plant, with the right to sublicense at that plant, thereby enabling the operator of the Baton Rouge alumina plant to make substantial savings in the manufacture of alumina. The offer was acknowledged by the Administrator of War Assets Administration under date of September 9, 1946. Copies of the offer and acknowledgment are attached hereto and made a part hereof as Exhibits 9 and 10, respectively.

Plants of Aluminum Company of America

13. Aluminum Company of America owns and operates five plants for the smelting of aluminum located, respectively, at Alcoa, Tennessee; Badin, North Carolina; Massena, New York; Niagara Falls, New York; and Vancouver, Washington. All of these plants are older than any of the aluminum smelting plants owned by or leased to Reynolds Metals Company or any of the Kaiser interests. These plants have available power sufficient to attain a production of approximately 650,000,000 pounds a year. The plant capacity of Aluminum Company of America to fabricate aluminum sheet is approximately 756,000,000 pounds a year. Its plant capacity to produce alumina is approximately 2,140,000,000 pounds a year, with the qualification that 840,000,000 pounds of such capacity is at the company's East St. Louis alumina plant which is largely obsolete, poorly located under present conditions and capable of production only at costs so high as to be almost noncompetitive for aluminum smelting purposes.

Comparative plant capacities

14. With respect to plants now in private operation (or—at Tacoma—in the process of being put into operation),
- 51 Aluminum Company of America owns or controls 43.7 percent of the plant capacity of the aluminum industry of the United States to produce alumina, 50.6 percent of the plant capacity of the aluminum industry of the United States to smelt aluminum, and 48.4 percent of the plant capacity of the aluminum industry of the United States to fabricate aluminum sheet. The names of such operators, the plants operated by each, the respective annual productive capacities of each of said plants in pounds, and the percentage of the aggregate capacity controlled by each company (exclusive of one-half of the capacity of the plant for the smelting of aluminum at Jones Mills for which gas engines and electric generators have not been installed) are as follows:

52	<u>Purpose and Plant Location</u>	<u>Aluminum Co. of America</u>	<u>Reynolds Metals Co.</u>	<u>Kaiser interests</u>	<u>Others</u>
	<i>Manufacture of alumina</i>				
	Mobile, Alabama.....	1,300,000,000			
	East St. Louis, Illinois.....	840,000,000			
	Total and Percentage.....	2,140,000,000—43.7%			
	Listerhill, Alabama.....		200,000,000		
	Hurricane Creek, Arkansas.....		1,555,000,000		
	Total and Percentage.....		1,755,000,000—35.9%		
	Baton Rouge, Louisiana.....			1,000,000,000	
	Total and Percentage.....			1,000,000,000—20.4%	
	<i>Smelting of aluminum</i>				
	Alcoa, Tennessee.....	277,000,000			
	Badin, North Carolina.....	48,000,000			
	Massena, New York.....	115,000,000			
	Niagara Falls, New York.....	40,000,000			
	Vancouver, Washington.....	170,000,000			
	Total and Percentage.....	650,000,000—70.6%			
	Listerhill, Alabama.....		99,750,000		
	Longview, Washington.....		61,980,000		
	Jones Mills, Arkansas.....		72,000,000		
	Troutdale, Oregon.....		144,000,000		
	Total and Percentage.....		377,730,000—29.4%		
53	Spokane, Washington.....			216,000,000	
	Tacoma, Washington.....			41,500,000	
	Total and Percentage.....			257,500,000—20.0%	

Fabrication of aluminum sheet

Alcoa, Tennessee..... 684,000,000
Edgewater, New Jersey..... 72,000,000

Total and Percentage..... 756,000,000—48.4%

Listerhill, Alabama..... } 175,800,000
Louisville, Kentucky..... }
LaGrange, Illinois..... } 4,200,000
Chicago, Illinois..... } 288,000,000

Total and Percentage..... 468,000,000—29.9%

Trentwood, Washington..... 288,000,000

Total and Percentage..... 288,000,000—18.5%

Manitowoc, Wisconsin (Aluminum Goods Manufacturing Company)..... 9,600,000
Fairmont, West Virginia (Fairmont Aluminum Company)..... 18,000,000
Jackson, Michigan (Sheet Aluminum Corporation)..... 6,600,000

54 Purpose and Plant Location Aluminum Company of America Reynolds Metals Company Kaiser interests Others

New Haven, Connecticut (United Smelting and Aluminum Company)..... 6,600,000
Wallingford, Connecticut (Wallingford Steel Company)..... }
Dover, Ohio (Greer Steel Company)..... } 9,600,000
Glendale, California (Hunter Engineering Company)..... }

Total and Percentage..... 50,400,000—3.2%

55 15. The capacity of Aluminum Company of America to smelt aluminum will be reduced by 40,000,000 pounds a year not later than March 1, 1949, as of which date the Company has surrendered its power contracts for Niagara Falls power to Niagara Falls Power Company and will cease operations at its Niagara Falls smelting plant. This will have the effect of reducing Aluminum Company of America's capacity to smelt aluminum to approximately 616,000,000 pounds per year or 49.0 percent of the total capacity of all United States plants. The present capacity of Reynolds Metals Company to smelt 377,730,000 pounds a year will then become 30.3 percent of the total, and the present capacity of Permanente Metals Corporation to smelt 257,500,000 pounds a year will become 20.7 percent of the total.

16. It is expected that virgin aluminum ingot will be imported into the United States from foreign sources and sold in the United States market as soon as it becomes possible to resume international trade on a normal basis. For the 28-year period between 1912 and 1939, virgin aluminum ingot of foreign origin was sold in the United States market to others than Aluminum Company of America to an average extent of approximately 10 percent of the virgin ingot market, and it is reasonably to be anticipated that in the future virgin aluminum from foreign sources will be sold in the United States aluminum ingot market to others than Aluminum Company of America in at least the same ratio. Such importations will still further reduce the percentage of the market held by Aluminum Company of America to approximately 44.1 percent.

17. Scrap aluminum and secondary aluminum ingot produced from such scrap are fully competitive with virgin aluminum ingot, much of such scrap and secondary aluminum for almost every use and all of it for some uses. None of the three domestic smelters of virgin aluminum in any way controls the amount of scrap or secondary aluminum ingot reaching the United States market.

56 During and since World War II the quantity of aluminum scrap (exclusive of process scrap) consumed in the domestic market has been approximately as follows:

	Pounds
1943	521,000,000
1944	626,000,000
1945	647,000,000
1946	681,000,000

While aluminum scrap originating from aluminum articles produced during and used for military purposes in World War II will continue to flow into the United States markets for many years, the normal amount of other aluminum scrap (exclusive of process scrap) consumed in the domestic aluminum market will be at

least 300,000,000 pounds a year. This quantity of aluminum, which inevitably comes into the market, still further reduces the proportion of the aluminum market of the United States held by Aluminum Company of America to approximately 36.2 percent.

18. None of the computations set forth in paragraphs 14, 15, 16, and 17 hereof give consideration to the probability that Reynolds Metals Company will soon lease and operate two additional pot lines at the Jones Mills smelting plant or that Asarco Corporation may succeed in leasing and operating the Los Angeles aluminum smelting plant. If the additional pot lines are operated at the Jones Mills plant and the Los Angeles plant is operated at 40 percent of capacity, the result will be to still further reduce the percentage of the United States aluminum ingot market held by Aluminum Company of America to approximately 35.4 percent.

19. Aluminum Company of America is currently smelting aluminum at a rate of approximately 650,000,000 pounds a year, which rate approximates its present ability to produce. Reynolds Metals Company likewise is currently smelting aluminum at a rate of approximately the capacity of its plants (377,730,000 pounds a year). Permanente Metals Corporation is currently smelting aluminum at the rate of approximately 180,000,000 pounds a year, having held the production of its Spokane aluminum smelting plant to that figure from its capacity of 216,

57 900,000 pounds a year, because of a temporary shortage of soda ash. The Permanente Corporation expects to be operating its Spokane aluminum smelting plant at capacity not later than April 15, 1947. On or about May 15, 1947, Permanente Metals Corporation's Tacoma aluminum smelting plant, with a capacity of 41,500,000 pounds per year, will go into production, and it is to be expected that from then on that corporation will be smelting aluminum at a rate approximating the capacity of both its plants (257,500,000 pounds a year). The only limitation that faces any domestic smelter of aluminum is the ability of that smelter to get soda ash, a chemical required for the production of alumina but not manufactured by the aluminum industry. The aluminum industry is a relatively small user of soda ash. The current shortage of soda ash is considered by the chemical industry to be a temporary postwar condition which will soon disappear. Expanded facilities are under construction and some are already in operation.

20. The present demand for aluminum is in no small part the result of the fact that aluminum ingot sells for 15 cents a pound and aluminum pig for 14 cents a pound, as contrasted with a price of 20 cents a pound for aluminum ingot on January 1, 1939. Aluminum pig was not generally available on the market on January 1, 1939, due to metallurgical limitations. The above-men-

tioned price reduction has been made possible by improved methods of manufacture and the economies incident to a greatly expanded production. During the same period the prices of metals competitive with aluminum have increased sharply, as for example, lead from 5 cents to 15 cents a pound, zinc from 5 cents to 10½ cents a pound, copper from 11 cents to 21½ cents a pound, pig iron from \$21.50 to \$30.85 a ton, and finished steel from \$52.90 to \$65.70 a ton. This relative change in the price of aluminum and other metals has expanded existing markets and opened new ones for aluminum. Any changes in the national economy that result in a reduction in general prices will, in all probability, apply to aluminum as fully as to other metals.

Wherefore the petitioner prays that a final judgment be entered in the above-entitled case adjudicating that Aluminum Company of America no longer has a monopoly of the aluminum ingot market of the United States and that, in consequence of the termination of such monopoly of the aluminum ingot market, competitive conditions have been restored in the aluminum industry.

And the petitioners will ever pray, etc.

WILLIAM WATSON SMITH,

FRANK B. INGERSOLL,

LEON E. HICKMAN,

SMITH, BUCHANAN & INGERSOLL,

1025 Union Trust Building,

Pittsburgh, Pennsylvania.

CHARLES E. HUGHES, JR.,

L. HOMER SURBECK,

HUGHES, HUBBARD & EWING,

1 Wall Street, New York, New York.

Solicitors for Aluminum Company of America.

Exhibit 1 to Exhibit "D"

Report of the Surplus Property Board to The Congress, under date of September 21, 1945 (pages 50-53)

THE RECOMMENDED COMPETITIVE PROGRAM

1. *Priorities of disposal.*—The following priorities will apply to all plants and equipment owned by the Government, regardless of the amount of investment.

a. Prospective competitors of Alcoa* will have first choice of plants and equipment.

b. Alcoa will be given the opportunity to take over certain desired facilities, subject to approval of the Attorney General,

*Aluminum Company of America is described as Alcoa throughout the report.

but only under terms of lease or sale that give no competitive advantage over others.

c. The Government will consider maintaining in stand-by condition individual plants as necessary insurance for the national defense upon recommendation of the War and Navy Departments.

59 d. Other facilities will be offered to private enterprise wishing to use buildings or equipment for purposes other than aluminum production.

e. Plants and equipment not otherwise needed may be exported to members of the United Nations, subject to approval of the State, War and Navy Departments.

The foregoing priorities may be modified in cases where research on aluminum processes and products can be fostered by selling, lending, or donating equipment that would not otherwise be used in the aluminum industry, provided the results of such research would become public property.

2. *Preferences among bidders for key plants.*—It is essential that key plants be disposed of to those bidders who have the organizations, experience, and financial resources that afford the greatest prospect for successful survival and maximum production in industry. Preference will therefore be given to such candidates.

3. *Individual plant disposal.*—The plan of the Board is to dispose of plants as follows:

Alumina plants

Hurricane Creek will be offered to a competitor of Alcoa under terms that guarantee the sale of alumina to others on a basis assuring a competitive price.

Baton Rouge will be offered in whole or part to a competitor of Alcoa. If no competitor of Alcoa can be found who believes that the plant can be operated in its present location, the Board will consider the desirability of removing some or all of the equipment to the Pacific Northwest for any competitor. If these arrangements cannot be made, the plant or part of it will be offered to Alcoa for removal to the Pacific Northwest, subject to approval of the Attorney General.

Lime-soda-sinter facilities

These facilities are adjuncts to the Alcoa-owned alumina plants at Mobile and East St. Louis. They will be offered to
60 Alcoa, subject to approval of the Attorney General, on terms that confer no advantage in production costs over competitors.

Semicommercial alumina plants

These four small plants will be kept in production until they have had time to demonstrate the feasibility or lack of feasibility of the processes. They will then be offered to the operators. Those not accepted will be turned over to the Bureau of Mines for experimental work under authority already possessed by the Bureau.

Reduction plants

Jones Mills, Troutdale, Spokane, and Tacoma will be offered to competitors of Alcoa. Undisposed-of plants may be held in stand-by for an indeterminate period because of the prospective commercial value of these plants when aluminum markets expand substantially.

Massena will be offered on lease to Alcoa, subject to approval of the Attorney General, upon terms that confer no advantage over competitors. This plant will be held by the Government until possibilities are determined for disposal to others when a low-cost power supply becomes available.

Maspeth, Burlington, Los Angeles, and Riverbank. If unacceptable to any bidders, these plants will either be held in stand-by upon recommendation of the Army and Navy Munitions Board or else disposed of according to the recommended priorities.

Scrambled equipment in private plants

First choice will go to owners of the plants in which the equipment is located. Equipment not thus taken will be disposed of according to the recommended priorities.

Fabricating plants

Holders of valid options or rights of first purchase will have first choice to exercise their rights. First choice on plants not under option and second choice on plants subject to prior rights of others will be granted to any operators of Government reduction plants in order to enable them to integrate their business more favorably. Third choice will go to any others according to the recommended priorities.

4. *Terms of lease or sale.*—The alumina, reduction, and large fabricating plants will first be disposed of by sale or lease to competitors of Alcoa. It may be that conditions will not justify the Government in making sales of these key plants until experience has demonstrated survival prospects.

Facilities sold to Alcoa and other facilities including smaller fabricating plants sold to others will be disposed of by lease or sale, according to the circumstances.

Rental terms and sales prices will be fixed with due regard to earning ability of the plant and not necessarily with regard to original cost or replacement value. On alumina and reduction plants, leasing terms may be offered, if necessary, as favorable as those received by Alcoa under its original lease. These terms may provide for the RFC to stand losses for an initial period, for the profits to be shared 85 percent to the Government and 15 percent to the operator, and in addition for the RFC to review and approve the price at which metal is sold, the top salaries, and extraordinary expenses. It is the belief of the Board that the operators should assume some of the risks. Should the operators wish a larger share of the profits, terms would call for greater assumption of risks by them. In any event, the RFC will require that the operators assume reasonable risks of working capital and that the Government withdraw its assumption of other risks after some fair period.

5. *Measures of Government support.*—The following general measures will be undertaken by the Surplus Property Board or under its direction in order to facilitate the success of new producers in meeting basic problems:

a. *Bauxite supply.*—The Government stock pile of bauxite at Hurricane Creek will be available to the plant operator. In addition, the Board will ask the help of the appropriate Federal agencies in exploring the possibilities of securing foreign ore by means of international agreements.

b. *Engineering investigations* will be made to determine changes necessary to place plants in the most advantageous position to compete, and the Government will finance such changes where the costs appear to be recoverable.

c. The Board to put into effect the policies already described to control the disposal of surplus secondary metal so that its maximum use is promoted without discouragement of new primary metal producers.

CONCLUSION

The Board reiterates its belief that in the case of the aluminum plants the objectives of the Surplus Property Act of 1944 can best be accomplished by a disposal plan that will promote competition in the industry. The program described in this report in the opinion of the Board seems more likely to promote competition and thus to achieve the purposes of the statute than any other proposal that has been called to the Board's attention. The Board recognizes that conditions beyond its control may make this program impossible of accomplishment. In that event, unless the courts dissolve or reorganize Alcoa under the Sherman Act, it will be for Congress to consider whether to leave the aluminum

industry under the domination of one company or whether to authorize the Government either by subsidized or direct operation of key plants to provide some measure of production that is independent of Alcoa's control.

Exhibit 2 to Exhibit "D"

ALUMINUM PLANTS AND FACILITIES

First Supplementary Report of the War Assets Administration
to the Congress

February 12, 1947

Appendix J to the Plaintiff's petition for mandamus is identical with this Exhibit.

63

Exhibit 3 to Exhibit "D"

BAER-72542

WAA-78

WAR ASSETS ADMINISTRATION

For Immediate Release
Tuesday, April 9, 1946

General E. B. Gregory, War Assets Administrator, today announced the lease of the government-owned Baton Rouge Alumina Plant to Kaiser Cargo, Inc., and The Troutdale Aluminum Reduction Plant to Reynolds Metals Co., subject to the approval of the Attorney General. This action substantially completes disposal through lease of the government-owned aluminum facilities. Both government-owned alumina plants, the three reduction plants capable of economic operation, all of the sheet mills (three in number), and two of the four extrusion plants have now been committed.

In addition to the Kaiser proposals for the Baton Rouge plant an offer was received from Asarco Aluminum Co., a newly formed corporation, the stock of which is owned by the American Smelting and Refining Company to the extent of 51%, with Swiss Aluminum Industries, Inc., holding 27% and a Dutch company, N. V. Billiton Mfg., 22%. This latter offer was contingent upon acceptance by the government of a proposal to lease the Troutdale plant to the same company. The terms of both the Kaiser and Asarco offers were substantially similar, being in the case of Kaiser a five-year lease with option in favor of Kaiser to cancel at the end of 30 months or to renew for an additional two years. It also contains an option to Kaiser to purchase the plant at any time up to six months before termination of the lease at depre-

ciated cost plus 4% per annum less rentals plus 4%, or present depreciated value less further depreciation during the term of the lease, whichever returns the government the most money.

Annual rentals are based on the fair value of the plant which is estimated to be 70% of its cost, after deducting the cost of the uncompleted sinter plant, or \$12,868,100. Kaiser will guarantee a rental of 25% of this fair value and pay on that amount:

4% for the first year, or \$128,700.

5% for the second year or \$160,900.

6% for the third year or \$193,100.

7% for the fourth year or \$225,300.

8% for the fifth and subsequent years or \$257,500.

However, should the plant be operated during any year at over 25% of capacity the rentals will be increased to an amount which will bear the same ratio to the guaranteed rentals as such production does to 125,000 tons (one-fourth of the annual rated capacity).

Kaiser will also pay taxes, maintenance, and insurance on the facilities.

The government agrees to place the plant in condition to operate and may also install dock facilities costing not over \$1,000,000 to permit the unloading of bauxite at the plant. In this event Kaiser will pay additional rentals of 8% per annum of the cost of the dock plus a fee per ton which it is estimated will repay the cost of the dock over a reasonable period of time.

Bidders for the Troutdale plant in addition to Reynolds were Kaiser Cargo, Inc., and Asarco Aluminum Co. Terms offered by all three bidders were substantially similar except that the Reynolds bid was based on full operation of the plant while that of Asarco was for 50% and the Kaiser rentals were for a minimum of 25% for the first and second years, 50% for the third, 75% for the fourth and 100% thereafter.

The Reynolds lease is for five years with option to cancel at the end of three years or to extend for an additional period of two years. An option, similar to that granted Kaiser on Baton Rouge, is also included. Rentals are based on a fair value estimated at 70% of the cost of the facilities or \$13,228,600 and are:

4% for the first year or \$529,100.

5% for the second year or \$661,300.

6% for the third year or \$793,600.

7% for the fourth year or \$925,900.

8% for the fifth year and subsequent years or \$1,058,200.

Reynolds is to pay taxes, maintenance and insurance on the facilities. The Government agrees to place the plant in condition to operate.

Numerous considerations motivated the decision of the Administrator in awarding the plants to the successful bidders. The principal factor in the case of Troutdale was the lack of sufficient metal producing facilities to permit Reynolds to supply the needs of its owned and leased fabricating facilities. Reynolds operates fabricating facilities having an annual wartime capacity of over 250,000 tons while its primary metal capacity without Troutdale was only 115,000 tons. It was also felt that the lease of Troutdale to Reynolds would increase the rentals payable to the Government on the Government-owned Hurricane Creek Alumina plant and on the fabricating plants leased to Reynolds. Rentals on these plants are dependent upon production and it appeared probable that operating of the Troutdale plant would require greater production of alumina and more production of fabricated products.

The Baton Rouge plant was allocated to Kaiser chiefly to permit this company to establish a completely integrated aluminum operator from alumina to semi-finished products, the Government having already leased the Spokane metal plant and the Trentwood rolling mill to Kaiser.

The principal factor against the proposal of Asarco was the belief that it was preferable to have two well-equipped competitors of Alcoa rather than those with inadequate facilities.

Attached is a copy of the War Assets Administrator's decision to award the plants.

April 9, 1946

1. On March 6, 1946, the War Assets Corporation received a bid from the Reynolds Metals Company to lease the aluminum reduction plant at Troutdale, Oregon. On March 26, separate and independent bids were received from Kaiser Cargo, Inc., to lease the Troutdale plant and the alumina plant at Baton Rouge, Louisiana. On March 26, a bid was received from Asarco 66 Aluminum Corporation to lease both the Troutdale plant and the Baton Rouge plant under an arrangement that required leasing of both plants or none.

2. Asarco as a new American corporation in which 51% of the stock is subscribed by the American Smelting and Refining Company, 27% by the Swiss company, S. A. pour l'Industrie d'Aluminium, and 22% by the Dutch company, N. V. Billiton Mj.

3. Attached are copies of the bids together with letters amending the bids of Reynolds and Kaiser, and a memorandum on further amendments of the Kaiser bid proposed by War Assets Administration. Also attached is a comparison of the minimum rentals that would be received under the competing bids.

The Reynolds bid for Troutdale offers substantially larger rentals than either the Kaiser or Asarco bid. The Kaiser bid for

Baton Rouge, as amended, offers approximately the same rentals as the Asarco bid.

4. It is directed that the lease of Troutdale shall be awarded to the Reynolds Metals Company, subject to the approval of the Attorney General, and formal declaration of surplus.

5. It is directed that the lease of Baton Rouge shall be awarded to Kaiser Cargo, Inc., subject to acceptance by Kaiser of the further amendments proposed by War Assets Administration and subject to the approval of the Attorney General, and formal declaration of surplus.

6. In accordance with Regulation 8310.13, the following is a record of the factors weighed in arriving at the decisions:

(a) The Reynolds bid for Troutdale was based on the need to supply ingot to a rolling mill at McCook, Illinois, and other fabricating plants. It follows unsuccessful efforts of Reynolds to secure substantial amounts of primary and secondary aluminum from Government controlled stocks. Privately owned sources are believed to be insufficient to meet Reynolds' continuous needs or else are undependable. Reynolds has indicated the intention to utilize fully all of its presently controlled capacity and to use immediately all of the Troutdale capacity. It offers to lease Troutdale, paying rental initially on all four potlines.

67 (b) The lease of Troutdale would (1) help Reynolds meet a serious deficiency in primary metal; (2) strengthen its competitive position in the industry; (3) probably increase the amount of rentals to the Government resulting from a fuller use of the McCook mill and a greater use of Troutdale than the other bidders now propose; and (4) increase the likelihood that Reynolds will either maintain for a longer period the leases of McCook and other Government fabricating plants, or else ultimately purchase such plants.

(c) The War Assets Administration is obligated to assure lessees of Government plants through methods of plant disposal with reasonable opportunity to become strong competitors in the hitherto monopolized aluminum industry. This policy is required by the report of the Surplus Property Board to Congress, "Aluminum Plants and Facilities," September 21, 1945.

(d) The bid of Kaiser Cargo, Inc., for Troutdale is based on initial rental for the use of only one of the four pot lines. At the same time, Kaiser is leasing the Spokane reduction plant with an initial obligation to pay rental for the use of only two out of six pot lines. Kaiser has not offered to guarantee or pay rentals for the initial use of most or all of the capacity at Spokane and Troutdale although the question has been raised with Kaiser.

(e) If Troutdale were leased to Kaiser, the primary metal capacity at Spokane and Troutdale would total approximately

180,000 tons, would exceed the Kaiser fabricating capacity of approximately 140,000 tons at the Spokane mill, and would greatly exceed the Reynolds primary metal capacity of approximately 115,000 tons.

If Reynolds acquires Troutdale, the distribution of capacity would be approximately as follows:

	Primary metal	Fabrication
Kaiser -----	108,000	140,000
Reynolds -----	187,000	250,000

(f) On the basis of the foregoing analysis, as between Reynolds and Kaiser, the soundest present relationship in the aluminum industry would probably be fostered if Troutdale were awarded to Reynolds.

(g) Kaiser does not now have the means of providing the raw material, alumina, for the Spokane reduction plant. Kaiser has bid for the Baton Rouge alumina plant on the grounds that competition will be strengthened if it integrates operations by securing an independent source of alumina. The terms of lease of the Hurricane Creek alumina plant by War Assets Administration to the Reynolds Metals Company give Kaiser partial but not complete or permanent assurance of a supply of alumina at a competitive price. Such an arrangement is required by the report of the Surplus Property Board to Congress but was recognized as only an interim solution of the alumina problem to others dependent upon Hurricane Creek. The Kaiser bid represents an effort to seek a more permanent solution. It is supported by arrangements Kaiser is making for supplies of high-grade imported bauxite. It is therefore a step in the direction of strengthening the competitive position of Kaiser and improving the prospects for survival in the industry and the ultimate purchase of the two Spokane plants.

(h) The bid of Asarco would establish a fourth producer in the primary aluminum industry and would be in accord with that objective of the Surplus Property Act calling for "maximum aid in * * * the development of the maximum of independent operators in trade, industry and agriculture." This objective was cited by the War Assets Corporation in the announcement of the award of the two Spokane plants to the Kaiser companies. However, the foregoing analysis has disclosed the need for strengthening the position of the two new producers in the aluminum industry in order to promote their prospects of survival and their retention of aluminum plants they have already acquired from the War Assets Administration. It would not be reasonable to foster a maximum number of temporary operators in the aluminum industry, knowing that some would be left in a weak position which could otherwise be remedied by the War Assets

69 Administration. The Surplus Property Board emphasized in its report to Congress the need for disposal policies that would promote survival of new competitors. Having aided the Reynolds Metals Company and Kaiser companies through previous plant disposals, the War Assets Administration has an obligation to make other plant disposals so that they do not lead to impairment of the positions of these companies.

(i) It is therefore concluded that the prospects of survival of strong competitors in the aluminum industry and prospects for the maximum disposal of Government-owned aluminum plants and facilities will best be fostered if the Troutdale plant is leased to the Reynolds Metals Company and the Baton Rouge plant is leased to Kaiser Cargo, Inc.

The foregoing is recommended and approved by the Price Review Board.

GEN. JOHN J. O'BRIEN,
Chairman.

DAVID MCPHERSON,
Vice Chairman.

SAM H. HUSBANDS.

Negotiated by—

IRVING GUMBEL,

*Chief, Chemicals and Light Metals Branch,
Industrial Division
Office of Real Property Disposal*

Approved:

E. B. GREGORY

APRIL 9th, 1946.

Exhibit 4 to Exhibit "D"

SPA-RE-7500, Ext. 6212

SPA-193

SURPLUS PROPERTY ADMINISTRATION

For Immediate Release

Thursday, January 10, 1946

70 The Aluminum Company of America has agreed to grant to the Reconstruction Finance Corporation free use of all its patents for extracting alumina from bauxite, thereby clearing the way for competition in the aluminum industry, W. Stuart Symington, Surplus Property Administrator, announced today.

Attorney General Tom C. Clark and Senator Joseph C. O'Mahoney, whose Surplus Property Subcommittee of the Senate Military Affairs Committee has been holding hearings on the alumi-

num problem, both hailed the agreement as opening the door to competition.

RFC is granted the right to sublicense the patents to lessees of government-owned plants, and under this arrangement the Reynolds Metals Company will take over operation of the government-owned Hurricane Creek plant, which has an annual capacity of 1,555,000,000 pounds of alumina.

Terms have been agreed upon between RFC and Reynolds and the leases will be signed shortly.

The patent agreement makes alumina available for smelting into aluminum, not only for the government-owned Jones Mills smelting plant in Arkansas, which Reynolds is also leasing, but also for the three government-owned smelting plants in the Pacific Northwest, as well as other smelters of the metal.

The three Pacific Northwest plants are the plants at Spokane, Washington, and Troutdale, Oregon, both formerly operated by Alcoa but now surplus, and the surplus plant formerly operated by Olin Industries at Tacoma, Washington.

Announcement of the agreement was made at a meeting in Symington's office of representatives of Alcoa and the Surplus Property Administration.

At the meeting Symington made public a letter to him from Arthur V. Davis, Chairman of Alcoa. Davis, recalling that Alcoa had spent millions of dollars and years in research on the developments of these patents, wrote:

"Except for the public considerations which you have presented to us so effectively, we would not consider a royalty-free license under such a valuable asset. However, we are glad to accede to these considerations and, if by so doing we have contributed 71 in any substantial way to the solution of the complex problem of surplus property disposal confronting the Congress, the Surplus Property Administration and other governmental agencies, we are well repaid."

In reply, Symington wrote:

"If in the past I have had occasion to be critical of the Aluminum Company of America, today's action on your part demonstrates to my complete satisfaction that your company, no less than the government agencies concerned, is moving constructively toward the solution of the problems which confront the Surplus Property Administration, the aluminum industry, and the country as a whole."

In approving the agreement on the patents, Attorney General Clark wrote the Surplus Property Administrator:

"The consummation of this lease and the granting of this license on the terms above stated should contribute substantially to the establishment of real competition in the aluminum industry. It is

entirely in line with the objective of this Department in the pending antitrust suit (against Alcoa)."

Senator O'Mahoney termed the agreement "a splendid beginning in the effort of the government to establish competition in this great industry and to turn the plants from Government ownership into operation by private industry."

Reynolds will lease the Hurricane Creek alumina plant and the Jones Mills aluminum plant under the following terms, upon which Reynolds and RFC had tentatively agreed, subject to the patents being made available:

Jones Mills aluminum plant

The lease is for five years with rental as follows:

1st year	\$534,800
2nd year	668,500
3rd year	802,200
4th year	935,900
5th year	1,069,600

72 Reynolds pays all taxes, insurance, and ordinary upkeep.

The lessee has an option to buy the plant. This option right expires six months before the lease expires. The option price is the present day reproduction value, to be determined, less normal income tax depreciation; or present day reproduction cost plus interest at 4% less rentals paid, with interest on rentals at 4%—whichever returns the most money to the Government.

Reynolds is leasing but half of this plant, the reason being that the half leased has cheap power, supplied by government-owned generating equipment. The other half is supplied by privately owned power, and is much higher priced.

Hurricane Creek alumina plant

The lease is for five years with rental predicated on 25% capacity operations as follows:

1st year	\$278,000
2nd year	341,000
3rd year	409,000
4th year	478,000
5th year	546,000

As operations go up, rents go up in proportion. As an illustration, if Reynolds operates this plant at full capacity, the rent for each will be four times the above figures.

Reynolds agrees to sell alumina at cost plus 6%, but in no event more than \$40 per ton. They agree to sell alumina to any purchaser, but their plants and government-owned plants which are leased or sold to others, shall have a preference on supply of alumina.

Reynolds also agrees to enter into no alliance as to pricing policy, etc., with any other producer of aluminum or alumina.

Reynolds also has an option to buy the alumina plant on the same basis as the aluminum plant.

73 Following are letters and statements on the agreements made public today by SPA, Alcoa, and interested government officials:

STATEMENT OF SENATOR JOSEPH C. O'MAHONEY, CHAIRMAN, SUBCOMMITTEE ON SURPLUS PROPERTY OF THE SENATE MILITARY AFFAIRS COMMITTEE

I learned with great pleasure from Surplus Property Administrator Symington of the action of Alcoa in making available to the Government the patents for the operation of the aluminum plant at Hurricane Creek. As a result of this action by Alcoa, it becomes possible for the Surplus Property Administration and the Reconstruction Finance Corporation to dispose of these plants in a manner that will set up substantial competition in the aluminum field. It means a splendid beginning in the effort of the Government to establish competition in this great industry and to turn the plants from Government ownership into operation by private industry. It is a substantial step forward.

STATEMENT BY W. STUART SYMINGTON, SURPLUS PROPERTY ADMINISTRATOR

It is with gratification we note the letter to us of January 10 from Mr. Arthur V. Davis, Chairman of the Board of the Aluminum Company of America. Not long ago, in the interest of competition, the Surplus Property Administration and the Reconstruction Finance Corporation were attempting to obtain new operators for all Government owned plants.

From the standpoint of disposal of these assets of the Government, and also from the standpoint of unemployment, it was a very serious situation.

First the Reynolds Metals Company, through its President, Mr. R. S. Reynolds, offered to operate two of the large plants, Hurricane Creek and Jones Mills, this without any Government subsidy whatever.

Despite this courageous decision, however, the key plant to any operation, Hurricane Creek, could not have been operated competitively unless and until a license had been obtained from the Aluminum Company to utilize their low cost lime-soda-sinter process for the production of alumina.

74 Not only has Alcoa, through its Chairman, Mr. Arthur V. Davis, now agreed to a license under this and other processes,

however, but also Mr. Davis has offered a license at no cost whatever to the Government, or to the lessees of the plants in question.

This decision of Reynolds and splendid contribution of Alcoa is the first step in putting back to work thousands of Americans and at the same time makes it possible to follow the American tradition of competitive free enterprise in the aluminum industry, without Government subsidy and without patent litigation or restriction.

JANUARY 10, 1946.

Mr. W. STUART SYMINGTON,
Surplus Property Administrator,
Washington, D. C.

DEAR MR. SYMINGTON: At a conference in your office yesterday afternoon, you requested us to grant a royalty-free license to the Reconstruction Finance Corporation under our patents relating to the extraction of alumina from low-grade bauxite, for use in the Government-owned alumina plant at Hurricane Creek, Arkansas, which is about to be leased to Reynolds Metals Company. You explained that this would enable the Reynolds Company to manufacture alumina at Hurricane Creek on a low-cost basis and in tremendous quantities. The Hurricane Creek plant has an annual capacity of 1,555,000,000 pounds of alumina, sufficient to smelt 800,000,000 pounds of aluminum annually. You pointed out that this operation would assure the availability of quantities of low-cost alumina adequate for the smelting of aluminum not only at the Government-owned aluminum smelting plant at Jones Mills, Arkansas, which is also being leased to the Reynolds Company, but also to any or all of the three Government-owned aluminum smelting plants in the Pacific Northwest, as well as to other smelters of aluminum. You urged upon us that a

75 royalty-free license would aid the Government in putting the Hurricane Creek alumina plant into immediate and permanent operation on advantageous terms, that this would greatly assist you in your aluminum plant disposal program and that it would be a substantial aid to the further development of competition in the smelting of aluminum.

In view of the public considerations which you presented so effectively we are glad to grant your request. We will grant the Reconstruction Finance Corporation a royalty-free non-exclusive license for use at the Hurricane Creek alumina plant under all of our existing patents relating to the extraction of alumina from bauxite. Such patents (herein sometimes referred to as "the alumina patents") cover three inventions: (1) the use of the lime-soda-sinter process in combination with the Bayer process—United States patents numbered 2,375,342 and 2,375,343, (2) con-

tinuous digestion—United States patent number 2,107,919, and (3) the use of starch as a settling and filtering aid—United States patent number 2,280,098.

The license will include the right to sublicense for use at the Hurricane Creek plant. As a term of the license, the Reconstruction Finance Corporation and any sublicensee will grant the Aluminum Company of America a nonexclusive royalty-free license, with right to sublicense, under any patents used at the Hurricane Creek alumina plant by the Reconstruction Finance Corporation or a sublicensee which are improvements upon the alumina patents and which are owned or controlled either by the Reconstruction Finance Corporation or such sublicensee or under which either has a right to sublicense others. We will cooperate with you in the prompt preparation of a patent license to the Reconstruction Finance Corporation on the royalty-free basis above set forth.

The alumina patents are of great value. They cover inventions which make possible the extraction of alumina from low-grade bauxite at Hurricane Creek on a basis competitive with the older Bayer process utilizing high-grade bauxite. Without them, the economical and continued operation of the Hurricane Creek plant would be impossible. The alumina patents represent many years of research by Aluminum Company of America. We have spent many millions of dollars in perfecting the processes covered by the alumina patents. Our records indicate that they effect a conservatively estimated saving of \$10.00 to \$12.00 a ton in the manufacture of alumina from low-grade bauxite.

Except for the public considerations which you have presented to us so effectively, we could not consider a royalty-free license under such a valuable asset. However, we are glad to accede to these considerations and, if by so doing we have contributed in any substantial way to the solution of the complex problems of surplus property disposal confronting the Congress, the Surplus Property Administration and other governmental agencies, we are well repaid.

Your very truly,

ALUMINUM COMPANY OF AMERICA,
ARTHUR V. DAVIS, *Chairman.*

JANUARY 10, 1946.

Mr. ARTHUR V. DAVIS,
*Chairman of the Board, Aluminum Company of America,
 Washington, D. C.*

DEAR MR. DAVIS: I want to thank you and the Aluminum Company of America for granting our request for a free license on the company's alumina patents for use at the Government-owned alumina plant at Hurricane Creek.

Without these patents, the Hurricane Creek plant could not be successfully operated. Under the free license which you have agreed to grant, however, the immediate and permanent operation of Hurricane Creek on a low-cost basis is assured.

This will make available an additional large quantity of low-cost alumina, the key to Surplus Property Administration's aluminum plant disposal program.

The Aluminum Company of America made an outstanding contribution to the winning of the war, for which this Nation should be forever grateful. Your public-spirited action in giving the Government a free license under your alumina patents for use at the Hurricane Creek plant is, of course, less
 77 dramatic, but nonetheless an equally significant contribution to the winning of the peace.

If in the past I have had occasion to be critical of the Aluminum Company of America, today's action on your part demonstrates to my complete satisfaction that your company, no less than the Government agencies concerned, is moving constructively toward the solution of the problems which confront the Surplus Property Administration, the aluminum industry, and the country as a whole.

Sincerely yours,

W. STUART SYMINGTON,
Administrator.

JANUARY 10, 1946.

Honorable W. STUART SYMINGTON,
*Administrator,
 Surplus Property Administration,
 Washington, D. C.*

DEAR MR. SYMINGTON: I have just been informed that an understanding has been reached between you as Surplus Property Administrator, Mr. Sam Husbands; as director of Reconstruction Finance Corporation, and representatives of the Aluminum Company of America whereby the Aluminum Company of America agrees to grant to Reconstruction Finance Corporation a nonexclusive license under its patents covering operations at

the Hurricane Creek alumina plant, with the right to sublicense these patents. I am advised that the Aluminum Company of America has agreed that the license shall be royalty-free. I am also advised that arrangements have been concluded whereby Reconstruction Finance Corporation will lease the Government-owned Hurricane Creek alumina plant and the Government-owned smelting plant at Jones Mills, Arkansas, to Reynolds Metals Company, and will sublicense to Reynolds Metals Company the patents covered by the royalty-free license granted by the Aluminum Company of America.

I want to express my gratification at the outcome of these negotiations. The consummation of this lease and the granting of this license on the terms above stated should contribute substantially to the establishment of real competition in the aluminum industry. It is entirely in line with the objective of this Department in the pending antitrust suit.

It is this teamwork of Government and business—evidenced by the public-spirited action of Alcoa in granting a royalty-free license and in the cooperative spirit of the Reconstruction Finance Corporation and Surplus Property Administration—that will get the job done. My hearty congratulations to all of you.

Sincerely yours,

(S) TOM C. CLARK,
Attorney General

Exhibit 5 to exhibit "D"

Baer—RFC 716

WAC-254

WAR ASSETS CORPORATION

For Immediate Release.
Friday, March 1, 1946.

The lease of the Government-owned aluminum sheet mill at McCook (Chicago), Ill., to the Reynolds Metals Company was announced today by the War Assets Corporation. The acceptance of the Reynolds proposal over offers made by three other companies was influenced primarily, WAC said, by the policies laid down by the Surplus Property Administration in its report of September 21, 1945, to Congress.

The lease is subject to the approval by the Attorney General.

It is a five-year lease and provides for annual rentals equivalent to 5 percent of net sales. Minimum rentals are to be \$750,000 for the first year, \$1,000,000 for the second year, \$1,500,000 for the third year, \$2,000,000 for the fourth year, and \$2,482,312 for the fifth year. The fifth-year minimum rental will be 8 percent of \$31,028,900, the estimated present-day depreciated reproduction

cost of the plant. Reynolds is to have an option to purchase the plant at a price to be calculated according to standard WAC terms. WAC is to put the plant in efficient operating condition for Reynolds at government expense.

79 Proposal of the Aluminum Company of America (Alcoa) to purchase the plant for \$30,135,000, or to lease it for an annual rental of \$2,410,800, and put the plant in efficient operating condition at its own expense could not be accepted, despite the attractive terms WAC said. Alcoa, it was pointed out, was not considered eligible to acquire this plant in the opinion of the Attorney General whose consent is necessary under Section 20 of the Surplus Property Act.

A proposal to lease part of the plant for conversion to magnesium sheet production and a proposal by the General Motors Corporation to lease another portion for the manufacture of Diesel motors were also rejected. WAC pointed out that the Surplus Property Administration's report on aluminum had specifically recommended that first preference on these facilities be given to firms, other than Alcoa, that would use them for aluminum operations. Moreover, it was believed that the utilization of the McCook plant for rolling aluminum would provide a greater utilization of its facilities than its use for the rolling of magnesium. It is understood that Reynolds will make available approximately 300,000 square feet to General Motors to permit the latter to continue its current operations in the production of Diesel engines.

The Government invested \$44,326,737 in the McCook plant, of which \$24,591,936 was for machinery and equipment, \$18,896,304 for buildings, \$752,396 for land and improvements, and \$86,102 for tools and automotive equipment. The plant has a capacity of 288,000,000 pounds a year.

The McCook plant is the ninth aluminum facility to be disposed of by the War Assets Corporation and its predecessors since January 1, 1946, under the Surplus Property Act. The other properties are: The alumina plant at Hurricane Creek, Ark., the aluminum ingot plants at Spokane, Wash., and Jones Mills, Ark., the rolling mills at Trentwood, Wash., and Listerhill, Ala., the extrusion plants at Los Angeles, Grand Rapids, and a portion of the Burlington, New Jersey, metal plant to be used for this purpose.

Sargent—6214

WAG-C-247

WAR ASSETS CORPORATION

Office of the Chairman

For Immediate Release,
Thursday, February 21, 1946

To foster the development of new independent enterprises and promote competition in the aluminum industry in conformity with the objectives of the Surplus Property Act, the War Assets Corporation today announced the lease of two Government-owned aluminum plants at Spokane, Washington, to the Kaiser-Frazer Corporation and Kaiser Cargo, Inc., subject to the approval of the Attorney General.

Under the agreement, the Trentwood aluminum rolling mill will be leased to Kaiser-Frazer and the Mead aluminum reduction plant to Kaiser Cargo for five years on an annual rental basis at terms which give the two companies options to purchase.

"These leases will place a third producer in the primary aluminum industry in continuation of the policies of the War Assets Corporation to promote competition in aluminum," Lieutenant General Edmund T. Gregory, Chairman, Board of Directors, War Assets Corporation, said, in announcing the leases.

The Reynolds Metals Company had submitted competitive bids for both the Spokane plants. Although the Reynolds offer might have given greater rental to the War Assets Corporation during the first four years of the lease, it was pointed out that acceptance of the Kaiser offers was in greater conformity to the objectives of the Surplus Property Act. The actual rental above the minimum would depend on the extent to which the capacity of each plant is used.

A statement by General Gregory, Major General G. E. Edgerton, Vice Chairman, and S. H. Husbands, a member of the Board of Directors, War Assets Corporation said:

81 "The Reynolds Metals Company is already established in the aluminum industry and has already arranged with the War Assets Corporation for the lease or purchase of four plants in the industry. These include the key alumina plant at Hurricane Creek, Arkansas, the reduction plant at Jones Mills, Arkansas, the aluminum rolling mill at Listerhill, Alabama, and the aluminum extrusion plant at Grand Rapids, Mich. The Kaiser companies propose to enter this industry for the first time. It is therefore consistent with Section 2 (b) for the War Assets Corporation to lease the two plants to the Kaiser companies.

"The Kaiser companies propose to use aluminum extensively in the production of automobiles, a field which has hitherto made very limited use of aluminum. Disposal of the two plants to the Kaiser companies therefore affords an opportunity to greatly expand the markets for aluminum and to promote the ultimate disposal of other aluminum plants subject to the Surplus Property Act.

"Although the Reynolds Metals Company has withdrawn its bids for the lease of the Chicago (McCook) aluminum rolling mill and the Troutdale aluminum reduction plant, the Company is eligible to resubmit bids for these plants and to bid for any other fabricating and reduction plants subject to disposal by the War Assets Corporation."

The Trentwood aluminum rolling mill was built at a cost of \$47,630,000 and has a capacity of 288,000,000 pounds a year. The Mead aluminum reduction plant cost \$22,270,000 and has an annual capacity of 218,784,000 pounds.

The terms of the lease of the Trentwood plant follow:

1. The lease shall be for a period of five years and may be terminated by Kaiser-Frazer Corporation (hereinafter called "Kaiser") at the end of the first year upon ninety days' prior written notice, or at the end of any subsequent year upon six months' prior written notice.

82 2. Kaiser-Frazer to pay taxes, insurance, and maintenance and the following rentals computed and paid as follows:

(a) For the first year \$250,000 per annum or 5% of the gross sales of the product of the plant during such year, whichever sum shall be higher;

(b) For the second year \$660,000 per annum or 5% of the gross sales of the product of the plant during such year, whichever sum shall be higher;

(c) For the third year \$1,336,000 per annum or 5% of the gross sales of the product of the plant during such year, whichever sum shall be higher;

(d) For the fourth year \$2,000,000 per annum or 5% of the gross sales of the product of the plant during such year, whichever sum shall be higher; and

(e) For the fifth year \$2,667,000 per annum provided that, if the rentals for the first four years paid to the Government are less than \$10,668,000, Kaiser shall during the fifth year pay 5% of the gross sales of the product of the plant during that year, if such 5% is greater than the \$2,667,000, up to an amount equal to the difference between the rentals actually paid and \$10,668,000.

3. As rapidly as possible and prior to the effective date of the lease, WAC will place the plant in operating condition and will

perform such plant clearance work as is necessary to accomplish this.

4. Upon the written request of Kaiser, WAC will sell for cash at the actual cost thereof to the Government such expendable supplies and other materials belonging to the Government and which are located at the premises to be leased as may be mutually agreed upon.

5. That the plant be formally declared surplus and assigned to WAC or its successor for disposition, and that the requirements of SPA Regulation 10 be satisfied in all respects, together with the requisite approval of the proposed lease by the Attorney General.

The terms of the lease of the Mead plant follow:

1. The lease shall be for a period of five years, and may be terminated by Kaiser Cargo, Inc. (hereinafter called 83 "Kaiser Cargo") after the end of the second year of the lease at any time upon six months' prior notice. Kaiser Cargo shall have the privilege of electing to renew the lease for an additional two years, provided written notice of its election to renew is received six months prior to the expiration of the term of the original five-year lease.

2. Rentals shall be payable monthly in advance at the following rates:

(a) \$208,000 for the first year during which two potlines shall be available;

(b) \$260,000 for the second year during which two potlines shall be available;

(c) \$468,000 for the third year during which three potlines shall be available;

(d) \$728,000 for the fourth year during which four potlines shall be available; and

(e) \$1,248,000 for the fifth year and any succeeding years in which the entire plant (six potlines) shall be available.

Kaiser Cargo shall also pay taxes, insurance and maintenance.

3. As rapidly as possible and prior to the effective date of the lease WAC will place two potlines in operating condition. Upon request a third potline will be placed in operating condition on or before the expiration of the third year from the effective date of the lease; a fourth potline on or before the expiration of the fourth year from such date, and the remaining two potlines on or before the expiration of the fifth year from such date.

4. Upon the written request of Kaiser Cargo, WAC will sell for cash at the actual cost thereof to the Government such expendable supplies and other materials belonging to the Government and which are located at the premises to be leased, as may be mutually agreed upon.

5. Kaiser Cargo will be given an option to purchase the plant at any time up to six months prior to the termination of the lease upon the following terms:

(a) Present reproduction cost, less depreciation to the date of the lease (hereinafter called "Present Depreciated Reproduction Cost"), plus interest at 4% per annum; less rentals plus interest at 4% per annum; or

(b) Present Depreciated Reproduction Cost, less depreciation at the rate or rates allowed by the Bureau of Internal Revenue or similar facilities in the computation of Federal income taxes:

provided, however, that the minimum residual value on all such items shall be 25%; whichever is the higher.

6. Subject to the terms and conditions of the agreement of lease to be entered into between the Government and any operator of the government-owned alumina plants, WAC will use its best efforts to assist Kaiser Cargo in obtaining alumina from such government-owned alumina plants. In the event that no government-owned alumina plant is in operation, or alumina from such sources is not available to Kaiser Cargo, WAC, to the extent permitted by law, will negotiate with Kaiser Cargo for the operation of an alumina plant by Kaiser Cargo, upon terms and conditions satisfactory to the Government.

7. Should the electrode capacity of the reduction plant be insufficient to supply the full needs of the six potlines, it will be agreed that the Government may at its option—

(a) Exclude such excess aluminum capacity from the agreement and rentals;

(b) Construct at its cost sufficient additional electrode capacity required to meet the deficiency; or

(c) Supply to Kaiser Cargo from outside sources and at Kaiser Cargo's cost of production an amount of electrodes necessary to meet such deficiency.

8. That the plant be formally declared surplus and assigned to WAC or its successor for disposition, and that the requirements of SPA Regulation 10 be satisfied in all respects, together with the requisite approval of the proposed lease by the Attorney General.

9. That the liability assumed by Kaiser Cargo, pursuant to the proposed lease, be fully guaranteed by Henry J. Kaiser and Company.

65 The statement issued by the Board of Directors of the War Assets Corporation follows:

On February 7, 1946, the Board of Directors conditionally accepted bids from the Kaiser-Frazer Corporation for the lease of the Spokane (Trentwood) aluminum rolling mill and from Kaiser

Cargo, Inc., for the lease of the Spokane (Mead) aluminum reduction plant.

The acceptance was conditional upon the absence of bids more favorably conforming to the objectives of the Surplus Property Act of 1944 that might be received before expiration of the 14-day period for advertising the plants, as required under SPA Revised Regulation 10.

Before expiration of this period at midnight, February 20, 1946, bids to lease both plants had been received from the Reynolds Metals Company. At the same time, the Reynolds Metals Company withdrew its bids to lease the Chicago (McCook) aluminum rolling mill and the Troutdale aluminum reduction plant.

It is directed that the leases shall be made to the Kaiser companies in accordance with the counter-proposals made by the War Assets Corporation, subject to the working out of further details mutually satisfactory to the parties, and subject to the approval of the Attorney General.

In accordance with Regulation 8310.13, the following is a record of the factors weighed in arriving at the decision:

(a) Section 2 (b) of the Surplus Property Act of 1944 states the objective "to give maximum aid in . . . the development of the maximum of independent operators in trade, industry, and agriculture"

The Reynolds Metals Company is already established in the aluminum industry, and has already arranged with the War Assets Corporation for the lease or purchase of four plants in the industry. These include the key alumina plant at Hurricane Creek, Arkansas, the reduction plant at Jones Mills, Arkansas, the aluminum rolling mill at Listerhill, Alabama, and the aluminum

extrusion plant at Grand Rapids, Michigan. The Kaiser

companies propose to enter this industry for the first time. It is therefore consistent with Section 2 (b) for the War Assets Corporation to lease the two plants to the Kaiser Companies.

(b) Section 2, paragraphs (d) and (r) of the Act states the objectives of discouraging and not fostering monopoly, and Section 2 (p) states the objective "to foster the development of new independent enterprise." The aluminum plant disposal program adopted by the Surplus Property Board and approved by the Congress in the report of the Board of September 21, 1945, states the objective of promoting competition in the aluminum industry, which until 1940 was subject to a monopoly of primary ingot. It is therefore in accordance with these objectives to lease the two plants to the Kaiser companies.

(c) The Kaiser companies propose to use aluminum extensively in the production of automobiles, a field which has hitherto made

very limited use of aluminum. Disposal of the two plants to the Kaiser companies therefore affords an opportunity to greatly expand the markets for aluminum and to promote the ultimate disposal of other aluminum plants subject to the Surplus Property Act.

(d) Although the Reynolds Metals Company has withdrawn its bids for the lease of the Chicago (McCook) aluminum rolling mill and the Troutdale aluminum reduction plant, the Company is eligible to resubmit bids for these plants, and to bid for any other fabricating and reduction plants subject to disposal by the War Assets Corporation.

E. B. GREGORY,
Chairman Board of Directors.

G. E. EDGERTON,
Vice Chairman.

S. H. HUSBANDS,
Member.

87

Exhibit 7 to Exhibit "D"

Shields-72543

WAA-833

WAR ASSETS ADMINISTRATION

For Immediate Release
Friday, November 29, 1946

War Assets Administration today approved the sale of an aluminum reduction plant, 3400 Taylor Way, Tacoma, Wash., to the Permanente Metals Corp., Oakland, Calif., for \$3,000,000.

Leased and operated during the war by Olin Industries, Inc., the plant consists of 18 buildings on a site of about 130 acres. The facility has a rated capacity of 41,500,000 lbs. of aluminum ingots per year and has a current fair value of \$3,289,748. The new owner estimates that an additional \$1,000,000 will have to be expended to place the plant in operation.

Permanente Metals Corp. plans to produce aluminum for civilian use and estimates that employment will be provided for 400 persons.

In approving the sale, which is subject to compliance with the Surplus Property Act, WAA pointed out that there are eight other Government-owned aluminum reduction plants, five of which cannot be placed in private operation at present because electric power is not available at reasonable rates. (Approximately 10 kilowatt-hours are required to produce one pound of aluminum, and power represents approximately 1/3 of the total production cost.) Of the remaining three plants, two have been leased to Reynolds Metals and one (Spokane, Wash.) to Permanente Metals.

Exhibit 8 to Exhibit "D"

DECEMBER 28, 1945.

Mr. SAM H. HUBBARD,

*Director, Reconstruction Finance Corporation,
Washington, D. C.*

DEAR MR. HUBBARD: I was surprised to learn in our yesterday's discussion that it had been assumed that our firm offer of October 17, 1945, to lease the Hurricane Creek, Arkansas, alumina plant had, in effect, been withdrawn. That offer was and still is a firm offer, as inquiry of us would have disclosed. The offer as made at the Joint Senate Committee hearing on October 17th, a copy of which was immediately sent you was as follows:

"Alcoa will lease for a five-year period the Hurricane Creek plant, subject to cancellation by either party on one year's notice. The Government may, at any time, remove any part or all of the Electrolyte plant now located on the land herein contemplated to be leased.

"Alcoa will pay as rental (including depreciation) for the Hurricane Creek Plant $\frac{3}{8}$ ¢ for each pound of alumina manufactured in and shipped from the Plant and will guarantee a minimum rental of \$1,000,000 a year. Alcoa will pay insurance and taxes.

"Alcoa will purchase from the so-called independent Arkansas producers such portion of the Hurricane Creek plant's requirements for bauxite as those producers may desire from time to time to furnish at competitive prices. To the extent those producers do not furnish the full requirements of the plant for bauxite, Alcoa will purchase from the RFC such bauxite as the RFC may desire to furnish at competitive prices from its so-called stock pile or elsewhere. Alcoa will undertake to supply the remainder of the bauxite requirements of the plant."

"Alcoa will sell the alumina produced at the Hurricane Creek Plant to such aluminum producers including Alcoa as the Government from time to time may direct, in carload lots, f. o. b. Hurricane Creek, at the same price to all purchasers, said price to be computed annually by averaging: any amount shipped from Hurricane Creek in that year up to 400,000,000 pounds at 2¢ per pound, the second 400,000,000 pounds at 1.9¢ per pound, the third 400,000,000 pounds at 1.8¢ per pound, and any amount over 1,200,000,000 pounds at 1.7¢ per pound.

"The above selling price is understood to include reimbursement to Alcoa for the use of its patents."

The above is in effect an offer to sell alumina as therein set forth at a maximum of 1.625 cents per pound (and lower for increased

production) plus whatever rental you decide to charge us for the plant and, if you prefer our offer to be construed this way, you are authorized to so construe it. Any reduction which you may elect to make in the rental will proportionately reduce the guaranteed minimum annual rental as set out in the offer.

Throughout our operation of this plant, we made no charge for the use of our patents—for the sinter process, for continuous digestion, and for the so-called starch process. As you are aware, we have always taken the position and confirmed to you that we will license under these patents any future operator of Hurricane Creek plant at reasonable royalty rates. Our offer of October 17th contains the provision that we will make no charge for the use of these patents while we operate the plant. These patents permit alumina to be produced from low-grade bauxite at a conservatively estimated saving of \$10.00 to \$12.00 per ton for the alumina produced and made available to Hurricane Creek tonnages of low-grade bauxite without which the construction of the Hurricane Creek plant would not have been warranted.

I take this opportunity to confirm my statement of yesterday that whenever we are so requested we are willing to make an offer to buy Hurricane Creek for cash.

Thanking you for this opportunity to clarify our position and assuring you of our continued cooperation along whatever lines we may be helpful, we remain

Yours very truly,

L. W. WILSON,

Vice President, Aluminum Company of America.

IWW:MNS.

9)

Exhibit 9 to Exhibit "D"

AUGUST 26, 1946.

GENERAL ROBERT M. LITTLEJOHN,

Administrator, War Assets Administration,

Washington, D. C.

DEAR GENERAL LITTLEJOHN: At a conference held on Friday, August 23d with General John J. O'Brien and others of your staff, we were requested to grant the Government a royalty-free license under such of our patents relating to the extraction of alumina from bauxite as would be useful in the operation of the Government-owned alumina plant at Baton Rouge, Louisiana, which is to be leased to the Permanente Metals Company.

A free license will place the Permanente Company on the same favorable competitive basis that Keynolds Metals Company enjoys under its lease of the Government-owned alumina plant at Hurricane Creek, with respect to which the Reconstruction Finance

Corporation obtained from Aluminum Company of America, a free license under all of the patents of Aluminum Company of America relating to the extraction of alumina from bauxite.

The leasing of the Baton Rouge plant to the Permanente Company is another major step in the Government's program to make alumina available in large quantities for the smelting of aluminum. The leasing of Baton Rouge in addition to the operation at Hurricane Creek will assure the availability of quantities of low-cost alumina adequate to supply the entire aluminum industry in the United States. The Baton Rouge plant has an annual capacity of 1,000,000,000 pounds of alumina, sufficient to smelt more than 500,000,000 pounds of aluminum annually, which added to the capacity at the Government-owned Hurricane Creek alumina plant, aggregates 2,555,000,000 pounds of alumina, which can be converted into more than 1,300,000,000 pounds of aluminum annually. This is four times the highest prewar market.

Government representatives have urged upon us that if this program could be consummated and the Baton Rouge plant 91 put into operation on patent license terms as advantageous as those prevailing at Hurricane Creek, it would greatly assist the Government in its aluminum plant disposal program and would be a further substantial aid to the development of even greater competition in the smelting of aluminum. This program, despite its adverse impact upon us at several points, is settled Government policy, and we have consistently acquiesced in and cooperated with it.

As a further evidence of our wholehearted willingness to help the program succeed, we are glad to grant the Government (the War Assets Administration, the Reconstruction Finance Corporation, or such other Government agency as you may designate) the requested free license with respect to the Baton Rouge plant. We will grant the Government a royalty-free, nonexclusive license for use at the Baton Rouge alumina plant under such of our existing patents, patent applications, or patents that may be granted thereon, relating to the extraction of alumina from bauxite as are needed in the operation of that plant. Such patents and patent applications (herein sometimes referred to as "the alumina patents") cover three inventions: (1) the use of starch as a settling and filtering aid—United States patent number 2,280,808, (2) continuous digestion—United States patent number 2,107,919, and (3) the impregnation of filter cloths with ferrous compounds—patent application of Mowee, et al., serial number 528,780. The license will not, at this time extend to the use of the lime-soda-sinter process in combination with the Bayer process—United States patents numbered 2,375,342 and 2,375,343—inasmuch as

your representatives have advised us that there is no present intention of using that process at Baton Rouge.

The license will include the right to sub-license for use at the Baton Rouge plant. It will be limited to the Baton Rouge plant at its present location and its existing capacity. As a term of the license, the Government and any sub-license under the alumina patents will grant to Aluminum Company of America with
92 respect to any United States patent which covers any improvement upon any such alumina patent made at any time during the term of the related alumina patent and used at the Baton Rouge alumina plant and which United States patent is owned or controlled either by the Government or any such sub-licensee under the alumina patents or under which either has the right to sub-license others, (1) a royalty-free nonexclusive license or sub-license, with the right to sub-license, provided that such sub-license by the Government or any sub-licensees under the alumina patents does not involve royalty expense to the Government or to such sub-licensees, and (2), in the event a sub-license would involve royalty expense to the Government or to any sub-licensees under the alumina patents, an option for such a sub-license, with the right to further sub-license, on royalty terms which will reimburse the Government or such sub-licensees for such royalty expense. We will cooperate with you in the prompt preparation of a patent license to the Government on the royalty-free basis above set forth.

We trust that the free license herein tendered will be of material assistance to you in completing your aluminum plant disposal program. The alumina patents are of great value and represent the fruits of a long, thorough, and expensive research program by Aluminum Company of America. They should make possible the operation of the Baton Rouge plant—equipped as it is with the latest facilities—on a basis fully competitive with any other alumina plant. The availability to the aluminum industry of alumina from the Government-owned Baton Rouge and Hurricane Creek alumina plants as well as from privately owned alumina plants, should insure the existence of adequate quantities of competitively priced alumina to anyone desiring to smelt aluminum.

Yours very truly,

ALUMINUM COMPANY OF AMERICA,
By I. W. Wilson, Vice President.

IWW:Y.

Exhibit 1A to Exhibit "D"

WAR ASSETS ADMINISTRATION,
Washington 25, D. C., Sept. 9, 1946.

In reply refer to: PLE-I
Baton Rouge Aluminum Plant
Plancor-226-AO

Mr. I. W. WILSON, *Vice President*
Aluminum Company of America,
Pittsburgh 19, Pennsylvania.

DEAR MR. WILSON: Reference is made to your letter of August 28, 1946 wherein you confirm the understanding reached at a conference held on Friday, August 23, 1946, with Mr. John J. O'Brien, Deputy Administrator, Office of Real Property Disposal, and other representatives of this Administration, that the Aluminum Company of America would be glad to grant the Government a royalty-free license under such of its patents relating to the extraction of alumina from bauxite as would be useful and necessary in the operation of the Government-owned alumina plant at Baton Rouge, Louisiana.

Please be advised that this Administration greatly appreciates the spirit of cooperation shown by you and the members of your staff in these discussions and is not unmindful of the great value of the technical advice and assistance given to the Government by the Aluminum Company of America in the wartime construction and expansion of integrated aluminum production facilities.

The action of the Aluminum Company of America in granting royalty-free licenses for both the Hurricane Creek and Baton Rouge alumina plants is as you point out, of valuable assistance to the Government in the carrying out of its over-all program for the disposal of aluminum plants and facilities to the best interests of the Nation, and will materially contribute to the end that a diversified and competitive aluminum industry be built up as a direct result of such plant disposal policy.

94. Copies of your letter are being furnished to the Department of Justice, Reconstruction Finance Corporation and other interested Government agencies for their information. Our Legal Division will no doubt be in touch with your Counsel shortly with regard to the preparation of definitive license agreements in accordance with your suggestion.

Cordially yours,

ROBERT M. LITTLEJOHN,
Administrator.

94a In the District Court of the United States for the
Southern District of New York

Equity No. 85-73

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA ET AL., DEFENDANTS

*Petition of Aluminum Company of America to amend its petition
filed in this Court on March 31, 1947*

And now, May 5, 1947, Aluminum Company of America prays
for leave to amend its petition filed in this court on March 31,
1947, by adding as paragraph 21 thereof the following averment:

21. On May 2, 1947, the War Assets Administration issued and
made public a release, a copy of which is attached hereto, made
part hereof and marked "Exhibit 11." Petitioner did not learn of
the said release in time to permit the preparation and service of
this petition upon counsel for the United States of America prior
to the present date.

And the petitioner will ever pray, etc.

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
SMITH, BUCHANAN & INGERSOLL,
1025 Union Trust Building,
Pittsburgh, Pennsylvania.

94b

CHARLES E. HUGHES, Jr.,
L. HOMER SURRECK,
HUGHES, HUBBARD & EWING,
1 Wall Street, New York, New York,
Solicitors for Aluminum Company of America.

ORDER OF COURT

And now, May 5, 1947, the foregoing petition presented in
open court and the amendment prayed for is hereby granted.

(S) FRANCIS G. GAFFEY,
U. S. D. J.

Advance Release
Baer-72543

WAA-1259

Exhibit 11 to Exhibit "D"

WAR ASSETS ADMINISTRATION

Advance release for
Tuesday A. M., May 6, 1947

About half of the surplus aluminum and other nonferrous metals plants have been disposed of, War Assets Administration said today, in releasing tables showing the current status of disposals of these plants.

WAA said that aluminum plants having an original cost to the government of \$654,400,000 have been declared surplus and, of these, plants costing originally \$387,800,000 have been sold or leased. This leaves \$277,600,000 in surplus aluminum plants and equipment still awaiting disposal.

94c All aluminum reduction plants capable of economical peacetime operation have been disposed of. Five reduction plants remain, but these are located in areas where economical electric power is not now available. Disposal of these plants will depend heavily upon the ability to procure sufficient power at desirable rates.

Aluminum fabricating plants not yet disposed of are those which were designed to produce extrusions, castings, and forgings solely for war purposes and which have little or no peacetime adaptations.

WAA pointed out that one of the principal objectives of the aluminum disposal program is to introduce competition in the aluminum industry by permitting new entrants in the field to become established on a profitable basis. This objective has been achieved in the case of leased plants by fixing a schedule of constantly increasing rentals so that, after the fourth year of operation, rentals will run on a straight commercial basis. The return to the government under this leasing arrangement has been highly satisfactory.

Copper, brass and other nonferrous metals plants originally costing \$106,807,594, have been declared surplus. Production facilities representing \$49,928,175 in original cost have been disposed of by WAA.

The most noteworthy disposal in this group was the sale of the brass mill at Indianapolis to the Bridgeport Brass Company for \$3,653,000, equal to 92½ percent of fair value.

94d Although no government-owned plants designed to produce magnesium metal have been disposed of, only a few fabricating plants remain for disposal, and these are of relatively small value. Disposal of magnesium metal production plants is complicated by the fact that the present demand for this metal is well within the production capacity of

privately owned plants. Further, not more than three of the government-owned metal plants can produce magnesium profitably on a commercial basis. Consequently, it is expected that some of the uneconomic plants may be retained on a stand-by basis for the present, while others must be converted to other uses.

Lists of nonferrous metals plants, which have been disposed of, together with those remaining for disposal, may be obtained from War Assets Administration, Information Division, Room 5621, Railroad Retirement Building, Washington, D. C.

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Appendix E to petition

In the District Court of the United States for the Southern
District of New York

Equity No. 85-73

UNITED STATES OF AMERICA, PLAINTIFF

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS

MOTION TO DISMISS PETITION

Comes now the United States of America and moves the Court to dismiss the Petition of Aluminum Corporation of America for a Judgment That It No Longer Has a Monopoly of the Aluminum Ingot Market in the United States, on the ground that said Petition fails to state a claim upon which relief can be granted. In support of said motion, the United States respectfully shows the Court as follows:

I

The Petition discloses on its face that conditions precedent to a determination by the District Court concerning the necessity or propriety of dissolution of Aluminum Corporation of America have not been met.

Under the decision and mandate of the Circuit Court of Appeals in the above-entitled action, the only issue left for further determination of the District Court is whether some form of dissolution of Aluminum Corporation of America is necessary or proper. The said decision and mandate required the postponement of consideration of this matter until such time as it is possible to review the competitive situation after the conclusion of the Government's Surplus Property disposal program. It affirmatively appears from the face of the petition that said disposal program has not yet been completed, and that the

96

disposal agency is still endeavoring to establish competitive conditions in the aluminum industry.

11

• The petition alleges no facts showing that Aluminum Corporation of America no longer has a monopoly of the aluminum ingot market, or that its monopoly has been or will be ended and its effects dissipated.

It appears from the face of the petition that only one Government-owned smelting plant has been finally disposed of to a potential competitor of Aluminum Corporation of America, and that this plant is not yet in operation. Although the petition alleges that certain other Government-owned smelting plants are and for several months have been operated in whole or in part by potential competitors of Aluminum Corporation of America, the petition shows that negotiations are still being conducted regarding the ~~1944~~ agreements on these plants and that no leases as yet have been executed.

No facts are alleged in the petition showing actual production and sales of aluminum ingot by Aluminum Corporation of America, or by its potential competitors; or the relative production and sales of said companies.

The petition is devoid of allegations as to other matters which are essential to the existence of competition in the aluminum ingot market, such as competitive costs as affected by plant location and available power, long-term availability of bauxite for the potential competitors of Aluminum Corporation of America, or the ability of said potential competitors to compete with Aluminum Corporation of America in the sale of aluminum and aluminum products under normal market conditions.

The petition affirmatively shows that essential patent licenses have not yet been issued by Aluminum Corporation of America to potential competitors for use in Government-owned plants; and the petition shows that insufficient time has
97 elapsed since potential competitors of Aluminum Corporation of America commenced operation of Government plants to provide a factual basis for determination as to probable future operations, and that such operations as have been conducted have been under abnormal marketing conditions which provide no guide for a decision as to the situation which will exist under normal market conditions.

III

It is apparent from the face of the petition that evidence essential to the trial of the issue raised by the petition cannot now be secured.

A decision on the petition would require an extensive trial involving nearly all aspects of the aluminum industry from production of bauxite to the marketing of aluminum products. Until such time as the Government disposal program has been completed and sufficient time has elapsed to provide a reasonable background of facts regarding actual operations, such a trial could not produce evidence upon which the Court could determine whether or not a sufficient part of the market for aluminum ingots has been occupied by persons who can effectively compete with Aluminum Corporation of America to end the monopoly and dissipate its effects.

IV

The granting of the relief sought by the petition is not needed or required by Aluminum Corporation of America and would seriously prejudice the rights of the United States.

The petition fails to show wherein or why Aluminum Corporation of America needs the judgment which it seeks at the present time. There are no facts alleged showing that Aluminum Corporation of America is operating under any competitive disadvantage under existing circumstances, and, in fact, the petition shows affirmatively that Aluminum Corporation of America's present rate of production is approximately double its entire capacity at the end of the trial of this case. On the other hand, the petition seeks to foreclose the United States from seeking dissolution of Aluminum Corporation of America at such time as competitive conditions might justify or require such dissolution, and to deprive the United States of its right under the Circuit Court of Appeals mandate to seek dissolution when and if the Government disposal program fails to establish actual competitive conditions in the aluminum industry.

Wherefore, the United States submits that the petition herein should be dismissed with prejudice.

(Signed) GEORGE B. HADDOCK,
Special Assistant to the Attorney General.

(Signed) JAMES R. BROWNING,
Special Attorney.

Eq. 5-73

United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF

ALUMINUM COMPANY OF AMERICA ET AL., DEFENDANTS

George B. Haddock, Special Assistant to the Attorney General; and James R. Browning, Special Attorney, attorneys and counsel for plaintiff.

Smith, Buchanan & Ingersoll of Pittsburgh, Pa., and Hughes, Hubbard & Ewing of New York City, attorneys for defendant, Aluminum Company of America; William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Charles E. Hughes, Jr., and L. Homer Surbeck, of counsel.

On March 29, 1947, the Aluminum Company of America, which will hereafter be referred to as Alcoa, filed its petition, praying that a final judgment be entered adjudicating that it no longer has a monopoly of the aluminum ingot market in the United States and that, in consequence of the termination of such monopoly, competitive conditions have been restored in the aluminum industry.

The matter is now before the court upon a motion by the plaintiff, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, to dismiss the petition for failure to state a claim upon which relief can be granted. It will be assumed that the petition is a pleading and that such a motion is proper, especially as Alcoa does not object to the procedure.

Plaintiff's motion is based upon four grounds—(1) that the petition discloses on its face that conditions precedent to a determination concerning the necessity or propriety of a dissolution of Alcoa have not been met, (2) that the petition alleged no facts showing that Alcoa no longer has a monopoly of the aluminum ingot market, or that its monopoly has been, or will be, ended and its effects dissipated, (3) that it is apparent from the face of the petition that evidence essential to the trial of the issue raised by the petition cannot now be secured, and (4) that the granting of the relief sought by the petition is not needed or required by Alcoa and would seriously prejudice the rights of the United States.

The petition and the briefs of both parties had been read and carefully studied and progress on the draft of an opinion had been considerable. But the further progress went the more apparent it became that the motion should be denied and discussion

and decision of the legal questions involved deferred until after hearing on the merits. So that now only a few observations on plaintiff's objections will be made.

In the judgment signed on April 23, 1946, pursuant to the mandate and opinion of the Circuit Court of Appeals, jurisdiction was expressly retained for the purpose of enabling Alcoa to apply for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States. Whether the petition has been filed prematurely, as urged by the plaintiff, cannot be satisfactorily determined from a mere consideration of the petition itself and the arguments advanced pro and con. This can be decided only upon the evidence adduced at the hearing as to presently existing conditions.

There is not much controversy as to the accuracy of the facts alleged in the petition. The dispute is rather over their legal significance and effect in the light of the adoption by the Surplus Property Board on September 21, 1945, of a program for the disposition of the Government-owned aluminum plants and facilities, which, as the petition alleges, has been substantially carried out but which, plaintiff says, has not been in operation long enough to determine whether permanent competitive conditions exist in a normal market. The solution of this question must depend upon the evidence produced.

101 The petition is not an attempt by Alcoa to relitigate the question of its monopoly on August 14, 1940, the date when the taking of testimony closed. That question was decided against it by the Circuit Court of Appeals and it is now res adjudicata. But the court recognized that conditions in the industry had so changed that it would not necessarily follow that Alcoa would continue to have a monopoly (148 F. 2d 416, 432).

Furthermore, whether or not Alcoa should now be dissolved, a question specifically left open by the Circuit Court of Appeals, cannot be decided until it is determined whether or not it still has a monopoly of the ingot market.

While the petition might well have been prepared in greater detail, as it stands, it contains sufficient facts to require a hearing and the taking of testimony and plaintiff's motion to dismiss it will be denied. Under Rule 12 (a) plaintiff must serve its answer to the petition within 10 days after service of a copy of the order to be entered hereon and the order will so provide. It is suggested, however, that counsel confer with the court as soon as possible after service of the answer in order to fix an early date for the hearing prior to the summer vacation period.

Settle order on two days' notice.

FRANCIS G. CAFFEY,
U. S. D. J.

MAY 28, 1947.

United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF

v. *B.*

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS

ORDER

The defendant Aluminum Company of America having filed its petition on March 31, 1947, praying that a final judgment be entered adjudicating that it no longer has a monopoly of the aluminum ingot market in the United States, and that, in consequence of the termination of such monopoly, competitive conditions have been restored in the aluminum industry, and the plaintiff having moved to dismiss the petition for failure to state a claim upon which relief can be granted, and the said motion having been opposed by the said defendant and having come on to be heard,

Now, on reading and filing the plaintiff's notice of motion, and on said defendant's petition, and having heard George B. Had-dock, Esq., Special Assistant to the Attorney General, and James R. Browning, Esq., Special Attorney, attorneys and counsel for plaintiff, in support of the motion, and William Watson Smith, Esq., of counsel for the defendant, in opposition thereto; and upon the opinion delivered upon the aforesaid motion and filed on May 28, 1947, and on all of the proceedings heretofore had herein, it is

Ordered that the aforesaid motion of the plaintiff be and the same hereby is in all respects denied; and it is further

Ordered that the plaintiff serve its answer to the said petition within ten (10) days after service of a copy of this order with notice of entry.

Dated New York, N. Y., June 2d, 1947.

(S) FRANCIS G. CAFFEY,
U. S. D. J.

Appendix H to petition

In the District Court of the United States for the Southern
District of New York

Equity No. 85-73

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS

ANSWER OF THE UNITED STATES

Comes now the United States of America, by its attorneys, and for answer to the Petition of Aluminum Company of America for a judgment that it no longer has a monopoly of the aluminum ingot market in the United States, says:

1. With respect to Paragraphs 1, 3, 9, 10, 14, 15, and 19 of the Petition, avers that the figures alleged in said paragraphs to be the annual capacity of aluminum plants being operated by Reynolds Metals Company (hereinafter called Reynolds) and corporations affiliated with and controlled by Henry J. Kaiser and Company (hereinafter called Kaiser) were prepared in part by the Special Committee Investigating the National Defense Program of the United States Senate and appear in the official reports of said Committee (Appendix 14 of Senate Report No. 10, Part 16, 78th Congress, 2d Session, dated March 4, 1944), and in part by the Surplus Property Board and the War Assets Administration, and appear in the official reports of said administration (Report of the Surplus Property Board to the Congress, dated September 21, 1945, and First Supplementary Report of the War Assets Administration to the Congress, dated February 12, 1947). Alleges that there are substantial and material discrepancies between said estimates, and avers that the United States is

without knowledge or information sufficient to form a belief

104 as to which of said estimates of approximate capacity of said plants is the most nearly accurate. Alleges, however, that said estimates were not intended to, and do not, and that the figures alleged in Paragraphs 1, 3, 9, 10, 14, 15, and 19 therefore do not accurately reflect the actual capacity at which said plants can be economically and profitably operated in competition with Aluminum Company of America (hereinafter called Alcoa), and that said figures are substantially higher than said actual capacity. Avers that said plants are not now being operated and cannot in the foreseeable future be operated to produce the quantities of alumina, aluminum pig and ingot, and aluminum products alleged in Paragraphs 1, 3, 9, 10, 14, 15, and 19.

2. With respect to Paragraphs 1, 2, 6, 8, 9, 10, 14, and 15 of the Petition avers that ownership, or possession under lease or letters of intent, and operation of plants by Kaiser and Reynolds as alleged therein, is not a proper measure of the ability of Kaiser and Reynolds to compete with Alcoa now or in the future, or the amount of effectiveness of that competition, or the portion of the aluminum ingot market of the United States which Kaiser and Reynolds do or will supply, or the power of Alcoa to dominate and control said market.

3. Admits the allegations of Paragraph 1 of the Petition, except as set forth in Paragraphs 1 and 2 of this answer, and except that the United States denies that Reynolds is operating the alumina plant at Listerhill, Alabama.

4. Admits the allegations of Paragraph 2 of the Petition, except as set forth in Paragraph 2 of this answer; but denies the implication in said paragraph that Reynolds has produced aluminum sheet at the plant located at La Grange, Illinois, and alleges that Reynolds has produced no aluminum sheet at said plant; and denies the implication in said paragraph that Reynolds has leased or purchased a number of aluminum fabricating plants from the United States. Alleges that the only aluminum fabricating plants purchased by Reynolds from the United States are two plants, located at Listerhill, Alabama, and Louisville, Kentucky, and that Reynolds has leased no fabricating plants from the United States, though it operates certain fabricating
105 plants owned by the United States under letters of intent as hereinafter more fully set forth in Paragraph 10 hereof.

5. Admits the allegations of the first four sentences of Paragraph 3 of the Petition, except the allegation that Alcoa made no profit from the construction of aluminum plants for the United States. Avers that the United States is without knowledge or information sufficient to form a belief as to the truth of said allegation, and that said allegation is irrelevant and immaterial to any issue presented by the Petition. Admits the allegations of the fifth sentence of Paragraph 3 of the Petition and the tabulation thereunder, except as set forth in Paragraphs 1 and 2 of this answer. Admits that the plants listed in Paragraph 3 of the Petition, except those located at Tacoma, Trentwood, and Listerhill, were built by Alcoa, but avers that it is irrelevant and immaterial to any issue presented by the Petition. Avers that the United States is without knowledge or information sufficient to form a belief as to whether each of said plants is as efficient in equipment and design as the plants for the same purpose owned and operated by Alcoa, and denies that possession of plants of equal efficiency of equipment and design does or will enable the present operators of said plants to compete effectively with Alcoa.

6. With respect to Paragraph 4 of the Petition, denies that the receipt by the United States of a part of the profits resulting from the operation of the plants referred to in Paragraph 4 of the Petition has any bearing upon Alcoa's dominance of the aluminum ingot market or the ability of the present operators of said plants to compete effectively with Alcoa. Admits that, though irrelevant to any issue presented by this Petition, the allegations of Paragraph 4 are true. Denies, however, the implication in said paragraph that the United States made a profit in the construction and operation of said plants, and that Alcoa's profit from the operation of said plant was nominal, consisting of 15% of the profits from the operation of said plants less a rental amounting to 10% of the cost of said plants. Avers that the United States sustained heavy losses in the construction and operation of said plants, and that Alcoa made large profits both in the operation of said plants and in the operation of its own plants.

Admits the allegations of Paragraph 4 of the Petition with reference to the cancellation of Alcoa's leases of said plants, but avers that Alcoa refused to enter into temporary arrangements for the continued operation of said plants which would have expedited the transfer of control of said plants to potential competitors of Alcoa and their early and effective operation by said competitors.

7. Admits the allegations of Paragraph 5 of the Petition.

8. Admits the allegations of Paragraph 6 of the Petition, except as set forth in Paragraph 2 of this answer.

9. Admits the allegations of Paragraph 7 of the Petition, except the allegation that the disposal program of the surplus property disposal agencies was in a program designed to create maximum competition with Alcoa. Avers that the "approved disposal program" consists of the report of War Assets Administration of September 21, 1945, as supplemented by the report of September 21, 1945. Avers that said program consists almost wholly of a statement of policy for the disposal of Government-owned aluminum plants, and that by its express terms said program was not designed to and could not, create effective competition with Alcoa.

10. For answer to Paragraph 8 of the Petition, in addition to the averments of Paragraphs 1 and 2 of this answer, the United States admits that, in selling, leasing, and otherwise disposing of Government-owned alumina plants, the successive surplus-property disposal agencies of the United States Government have taken such action as the personnel of those agencies believed to be best calculated to achieve the objectives of the "approved disposal program." Admits that on February 12, 1947, the War Assets Administration filed with the Congress a first supplementary

report, which report is attached to the Petition as Exhibit 2, and that the purposes of said report included those alleged in Paragraph 8 of the Petition, but avers that the primary purposes of said report were to review the action taken by the War Assets Administration to the date of said report to attain the objectives outlined in the Administration report of September 21, 1945, to point out what remained to be done in the attainment of
 107 said objectives, and to evaluate the progress which had been made and which might be made through the medium of the "approved disposal program" toward establishing competitive conditions in the aluminum industry. Denies that the Department of Justice has advised and guided the successive Government disposal agencies in the application of the "approved disposal program." Avers that the participation of the Department has been confined to rendering its opinion in response to specific limited referrals, as to whether specified proposed arrangements would violate the antitrust laws.

(a) Admits the allegations of subparagraph (a) of Paragraph 8 of the Petition, but avers that Alcoa has purchased from War Assets Administration a large aluminum fabricating plant for the production of extrusions at Cressona, Pennsylvania, and substantial quantities of aluminum manufacturing equipment; and that War Assets Administration has offered to sell to Alcoa a large aluminum smelting plant at Massena, New York and negotiations are presently being conducted relative thereto.

(b) Denies the allegations of subparagraph (b) of Paragraph 8 of the Petition. Avers that no lease of the Hurricane Creek alumina plant has been executed and avers that Reynolds is operating said plant under a letter of intent or agreement to lease. Avers that said letter of intent requires Reynolds, during its operation of said plant, to sell alumina up to the total capacity of the plant, less Reynolds' requirements therefor, to producers of aluminum ingot or pig in Government-constructed reduction plants who have insufficient alumina production of their own, at cost plus 6%, but in any case not over \$40 per ton f. o. b. the Hurricane Creek alumina plant; except that if the cost of labor, raw materials, and power should exceed the price levels of these cost items of the second quarter of 1945, then the maximum selling price of any alumina sold by Reynolds shall be increased proportionately. Admits that on January 10, 1946, the Aluminum Company of America advised the Surplus Property Administrator that Alcoa would grant to the Reconstruction Finance Corporation a
 108 royalty free, non-exclusive license for use at the Hurricane Creek alumina plant under Alcoa's existing patents relating to the extraction of alumina from bauxite, and that said license would include the right to sublicense for use at the Hurricane

Creek plant. Avers that said offer to license was conditioned upon agreement by the Reconstruction Finance Corporation that it and its sublicensee would grant to Alcoa nonexclusive royalty-free licenses under all patents owned by the Reconstruction Finance Corporation or its sublicensees, and used at the Hurricane Creek alumina plant which are improvements upon the alumina patents of Alcoa. Avers that there is disagreement between Alcoa and War Assets Administration as to the terms of the proposed license agreement; that said disagreement remains unsettled; that no license has been granted under said patents by Alcoa; and that until this disagreement is satisfactorily resolved no operator of said plant can be assured that it will be able to operate said plant in competition with Alcoa.

(c) With respect to subparagraph (c) of Paragraph 8 of the Petition, admits that those Government-owned plants which are now being operated by private concerns, other than the Tacoma smelting plant and Listerhill sheet mill, are being operated under letters of intent or agreements to lease said plants which embody, among others, the provisions recited in subparagraph (c) of Paragraph 8 of the Petition. Avers that, in addition to said provisions, said letters of intent or agreements to lease provide that said private concerns may cancel said letters of intent or agreements to lease without penalty upon notice of from ninety days to two years. Denies the implication in said subparagraph that said letters of intent or agreements to lease constitute final disposal of said plants.

(d) Admits the allegations of the first sentence of subparagraph (d) of Paragraph 8, but denies the implication thereof that Reynolds and Kaiser have been equipped with integrated and well-balanced plant facilities as a result of the disposal to them of Government-owned aluminum plants, and avers that, as more particularly alleged hereinafter, neither Kaiser nor Reynolds has acquired a sufficiently integrated or well-balanced position in the aluminum industry of the United States to enable them to
 109 compete effectively with Alcoa. Denies that final disposition of any Government-owned aluminum plants have been made to Reynolds or to corporations controlled by Kaiser, except of the Listerhill aluminum sheet mill which was sold to Reynolds and the Tacoma smelting plant which was sold to Kaiser. Avers that all other Government-owned plants now being operated by Kaiser and Reynolds are being operated under letters of intent or agreements to lease, subject to cancellation without penalty. Denies all other allegations of subparagraph (d) of Paragraph 8 of the Petition, except admits that Exhibit 3, attached to the Petition, is a copy of a news release issued by War Assets Administration. Avers that said news release has no probative value, and is not properly made a part of the Petition.

11. For answer to Paragraph 9 of the Petition, in addition to the averments of Paragraphs 1 and 2 of this answer:

(a) Admits the allegations of subparagraph (a) of Paragraph 9 of the Petition.

(b) Admits the allegations of subparagraph (b) of Paragraph 9 of the Petition, except that no lease of said property has been executed and said property is now being operated by Reynolds under a letter of intent. Admits that said letter of intent embodies, among others, the terms described in said subparagraph of the Petition, but avers that said letter contains, in addition thereto, a provision enabling Reynolds to cancel said agreement upon notice without penalty.

(c) Admits the allegations of subparagraph (c) of Paragraph 9 of the Petition, except that no lease of said property has been executed and said property is now being operated by Reynolds under a letter of intent. Admits that said letter of intent embodies, among others, the terms described in said subparagraph of the Petition, but avers that said letter contains, in addition thereto, a provision enabling Reynolds to cancel said agreement upon notice without penalty.

(d) Admits the allegations of subparagraph (d) of Paragraph 9 of the Petition, except that no lease of said property has been executed and said property is now being operated by Reynolds under a letter of intent. Admits that said letter of intent embodies, among others, the terms described in said
110 subparagraph of the Petition, but avers that said letter contains, in addition thereto, a provision enabling Reynolds to cancel said agreement upon notice without penalty.

(e) Admits the allegations of subparagraph (e) of Paragraph 9 of the Petition, except that no lease of said property has been executed and said property is now being operated by Reynolds under a letter of intent. Admits that said letter of intent embodies, among others, the terms described in said subparagraph of the Petition, but avers that said letter contains, in addition thereto a provision enabling Reynolds to cancel said agreement upon notice without penalty.

(f) Admits the Exhibits 3, 4, and 5, attached to the Petition, are copies of news releases issued by War Assets Administration and Surplus Property Administration, but denies that said news releases are competent evidence of the matters referred to therein.

(g) Admits that the plants referred to in subparagraph (g) of Paragraph 9 of the Petition were built by Alcoa, but avers that this fact is irrelevant and immaterial to any issue presented by this Petition. Avers that the United States is without knowledge or information sufficient to form a belief as to whether each of said plants has equipment and facilities of the same type as

are installed in the most modern plants of Alcoa, or whether each of said plants and the Listerhill sheet mill is as efficient in equipment and design as the plants for the same purpose owned and operated by Alcoa, and denies that possession of plants of equal efficiency of equipment and design does or will enable Reynolds to compete effectively with Alcoa. Denies that power is now available at the Troutdale aluminum smelting plant, and denies that power is available at the Jones Mills smelting plant at rates as low as those at which power is available to Alcoa.

(h) Admits the allegation of subparagraph (h) of Paragraph 9 that Reynolds and War Assets Administration have been negotiating for the lease of the two pot lines at the Jones Mills aluminum reduction plant which are excluded from the present agreement to lease, but avers that substantial differences exist between War Assets Administration and Reynolds

111 concerning said matter and that there is no assurance that agreement will be reached. Admits the allegations in the second sentence of subparagraph (h) of Paragraph 9: Admits that Arkansas Power and Light Company has offered Reynolds sufficient firm electrical power to run two additional pot lines at the Jones Mills aluminum reduction plant, subject to the Arkansas Power and Light Company being the successful bidder for the Lake Catherine steam plant which is being offered for sale by War Assets Administration, but denies that said power has been offered to Reynolds by the Arkansas Power and Light Company at rates as low as those at which power is available to Alcoa. Avers that the Lake Catherine steam plant has never been completed and is not in operating condition, and that it would require a substantial period of time to complete said plant and to place the same in operating condition even if the Arkansas Power and Light Company becomes the successful bidder for said plant. The United States is without knowledge or information sufficient to form a belief as to whether natural gas is available in quantities sufficient to generate all of the electrical power needed to operate all four pot lines at the Jones Mills smelting plant, or as to the cost of said power per kilowatt hour, or as to the length of time that would be required to secure and install necessary gas engines and electrical generators. Avers that all of the allegations of Paragraph 9 (h) are speculative and conjectural and are irrelevant and immaterial to any issue presented by this Petition.

(i) Admits that, as alleged in subparagraph (i) of Paragraph 9 of the Petition, War Assets Administration has sold an aluminum forgings plant located at Louisville, Kentucky to Reynolds. Denies that War Assets Administration has leased the aluminum plants at Grand Rapids, Michigan, and Phoenix, Arizona, to Reynolds, and avers that said plants are being operated by

Reynolds under letters of intent. Denies that Reynolds is operating or has any interest in or control over the plant at Newark, Ohio.

(j) Denies the allegations of subparagraph (j) of Paragraph 9 of the Petition.

112 12. For answer to Paragraph 10 of the Petition, in addition to the averments of Paragraphs 1 and 2 of this answer:

(a) Admits the allegations of subparagraph (a) of Paragraph 10 of the Petition.

(b) Admits the allegations of subparagraph (b) of Paragraph 10, except that the United States avers that no lease of said plant has been executed and avers that said plant is now being operated by Kaiser interests under a letter of intent. Admits that said letter of intent embodies, among others, the rental terms described in subparagraph (b) of Paragraph 10 but avers that said letter contains, in addition thereto, a provision enabling Kaiser to cancel said agreement upon notice without penalty. Alleges that only five of the six pot lines in said plant are being operated.

(c) Admits the allegations of subparagraph (c) of Paragraph 10, except that the United States avers that no lease of said property has been executed and avers that said property is now being operated by Kaiser interests under a letter of intent. Admits that said letter of intent embodies, among others, the rental terms described in subparagraph (b) of Paragraph 9, but avers that, in addition thereto, the said letter contains a provision enabling Kaiser to cancel said agreement upon notice without penalty.

(d) Admits the allegations of subparagraph (d) of Paragraph 10, except that the United States avers that no lease of said property has been executed and avers that said property is now being operated by Kaiser interests under a letter of intent. Admits that said letter of intent embodies, among others, the rental terms described in subparagraph (b) of Paragraph 9, but avers that, in addition thereto, said letter contains a provision enabling Kaiser to cancel said agreement upon notice without penalty; and avers further that said letter contemplated the expenditure of over a million dollars by the United States Government for the construction of a dock at said plant, which said expenditure has not been made by the United States Government.

(e) Admits the allegations of subparagraph (e) of Paragraph 10 of the Petition, except the allegation that Permanent Metals Corporation expects to have the Tacoma plant
113 in operation on or about May 15, 1947. Denies said allegation, and avers that said plant was not placed in operation on May 15, 1947, and is not now in operation, and further alleges that Alcoa's dominance and control of the aluminum ingot market of the United States has prevented and now prevents the economic and profitable operation of said plant.

(f). Admits that Exhibits 3, 6, and 7, attached to the Petition, are copies of news releases issued by War Assets Administration, but denies that said news releases are competent evidence of the matters referred to therein.

(g) Denies the allegations of subparagraph (g) of Paragraph 10 of the Petition.

(h) Avers that the United States is without knowledge or information sufficient to form a belief as to whether each of the plants described in subparagraph (h) of Paragraph 10 of the Petition except the Tacoma plant has equipment and facilities of the same type as are installed in the most modern plants of Alcoa, or whether the Tacoma plant is thoroughly modern and efficient, or whether each of said plants is as efficient in equipment and design as the plants for the same purpose which are owned and operated by Alcoa, and denies that the possession of plants of equal efficiency of equipment and design does or will enable Reynolds to compete effectively with Alcoa. Admits that power from the Bonneville Power Authority is available to the plants referred to in subparagraph (h) of Paragraph 10 of the Petition, but denies that said power is available at rates as low, and conditions as desirable, as those at which power is available to Alcoa.

13. Denies the allegations of Paragraph 11 of the Petition that War Assets Administration is now negotiating with Asarco Aluminum Company for the lease of the Los Angeles aluminum smelting plant. Avers that War Assets Administration has rejected all bids for said plant, and has recommended that the machinery and equipment located at said plant be dismantled.

14. Avers that none of the allegations of Paragraph 12, 12 (a) and 12 (b) of the Petition are relevant or material to any issue involved in this proceeding, or have any bearing upon the ability of Kaiser and Reynolds to compete with Alcoa now or in the future, or the amount or effectiveness of that competition, or the portion of the aluminum ingot market of the United States which Kaiser and Reynolds do or will supply, or upon the power of Alcoa to dominate and control said market. Denies that Alcoa has cooperated with the Government disposal program. For further answer to the allegations of said paragraph:

(a) Denies that Alcoa cooperated with the United States in releasing Government-owned plants for disposition to others as alleged in subparagraph (a) of Paragraph 12 of the Petition. Avers that the Government cancelled said leases pursuant to its legal rights under the terms of said leases, and that Alcoa had no right to reject said cancellation. Alleges that the United States requested Alcoa to enter into temporary arrangements for the continued operation of said plants after the cancellation of Alcoa's leases thereto in order to expedite the transfer of control

of said plants to potential competitors of Alcoa and the early and effective operation of said plants by said potential competitors, and that Alcoa refused to enter into such temporary arrangements. Alleges that Alcoa removed from said plants, blueprints and plans relating thereto, and essential to the efficient operation, maintenance and repair of said plants, and that in consequence thereof present operators of said plants have been handicapped in their efforts to compete effectively with Alcoa.

(b) Admits that, as alleged in subparagraph (b) of Paragraph 12 of the Petition, Alcoa made an offer to lease the Hurricane Creek alumina plant on December 27, 1945, and that Exhibit 8 attached to the Petition is a copy thereof. Denies all other allegations of said subparagraph.

(c) Admits that, as alleged in subparagraph (c) of Paragraph 12 of the Petition, Alcoa advised the Surplus Property Administrator on January 10, 1946, that Alcoa would grant to the Reconstruction Finance Corporation a royalty free, non-exclusive license for use at the Hurricane Creek alumina plant under Alcoa's existing patents relating to the extraction of alumina from bauxite, that said license would include the right to sublicense for use at the Hurricane Creek plant, and that Exhibit 4 attached to the Petition contains the said offer and the reply of the Surplus Property Administrator thereto. Avers that said offer to license was conditioned upon agreement by the Reconstruction Finance Corporation that it and its sublicensees would grant to Alcoa nonexclusive royalty free licenses under any patents owned by the Reconstruction Finance Corporation or its sublicensees and used at the Hurricane Creek alumina plant which are improvements upon the alumina patents of Alcoa. Avers that there is disagreement between Alcoa and War Assets Administration as to the terms of the proposed license agreement; that said disagreement remains unsettled; that no license has been granted under said patents by Alcoa; and that until this disagreement is satisfactorily resolved no operator of said plant can be assured that it will be able to operate said plant in competition with Alcoa. Alleges that the failure of Alcoa to grant a license under its patents in accordance with its offer of January 10, 1946, has been a factor in retarding the development of effective competition in the aluminum industry. Denies all other allegations of said subparagraph.

(d) Admits that, as alleged in subparagraph (d) of Paragraph 12 of the Petition, Alcoa advised the Surplus Property Administrator on August 26, 1946, that Alcoa would grant to the War Assets Administration a royalty free, non-exclusive license for use at the Baton Rouge alumina plant under three patents owned by Alcoa relating to the extraction of alumina from bauxite, that

said license would include the right to sublicense for use at the Baton Rouge plant, and that Exhibits 9 and 10 attached to the Petition contain the said offer and the reply of the Surplus Property Administrator thereto. Avers that said offer to license was conditioned upon agreement by the War Assets Administration that it and its sublicensee would grant to Alcoa non-exclusive royalty-free licenses under any patents owned by the War Assets Administration or its sublicensees and used at the Baton Rouge alumina plant which are improvements upon the alumina patents

of Alcoa. Avers that there is disagreement between
116 Alcoa and War Assets Administration as to the terms of the proposed license agreement; that said disagreement remains unsettled; that no license has been granted under said patents by Alcoa; and that until this disagreement is satisfactorily resolved no operator of said plant can be assured that it will be able to operate said plant in competition with Alcoa. Alleges that the failure of Alcoa to grant a license under its patents in accordance with its offer of January 10, 1946, has been a factor in retarding the development of effective competition in the aluminum industry. Denies all other allegations of said subparagraph.

15. Answering Paragraph 13 of the Petition, admits the allegation in the first sentence thereof. Admits that the plants referred to therein were originally built before construction of the aluminum-smelting plants now owned or operated by Reynolds and Kaiser, but avers that some of the facilities and equipment in smelting plants owned by Alcoa have been constructed and installed more recently than equipment and facilities in smelting plants owned or operated by Reynolds and Kaiser; and denies the implication in the second sentence of Paragraph 13 that the smelting plants of Alcoa are less efficient than those owned or operated by Reynolds and Kaiser. Alleges that Alcoa's cost of production of aluminum ingot is substantially lower than that of Reynolds and Kaiser. Denies that the productive capacity of Alcoa's smelting plants is limited to 650,000,000 pounds per year by reason of lack of available power. Denies that the capacity of Alcoa's plants is limited to 756,000,000 pounds of aluminum sheet. Admits that the alumina plants of Alcoa have a capacity of 2,140,000,000 pounds per year. Denies all other allegations of Paragraph 13 of the Petition.

16. For answer to Paragraph 14 of the Petition, in addition to the averments in Paragraphs 1 and 2 of this answer, denies the allegations therein relating to the percentages of the total aluminum-plant capacity in the United States which is owned or controlled by Alcoa. Avers further that the percentage of said capacity which is owned or controlled by Alcoa, does not
117 measure the ability of Reynolds and Kaiser to compete with

Alcoa now or in the future, nor the amount and effectiveness of that competition, nor of the portion of the aluminum ingot market of the United States which Kaiser and Reynolds do or will supply. Avers that the portion of aluminum-ingot market of the United States which is now supplied by Alcoa is substantially higher than the percentages alleged in Paragraph 14 of the Petition. Admits the allegations in Paragraph 14, as to purpose and location of plants, but denies that the figures therein set forth as to plant capacity are accurate.

17. Answering Paragraph 15 of the Petition, avers that the United States has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph relating to the surrender by Alcoa of its power contracts with Niagara Falls Power Company, Alcoa's intention to cease operations at its Niagara Falls smelting plant, and the reduction in Alcoa's ingot capacity which may result thereby. Denies all other allegations of Paragraph 15 of the Petition. Avers that all of the allegations of said paragraph are speculative and conjectural.

18. Answering Paragraph 16 of the Petition, admits that for the 28-year period between 1912 and 1939, virgin aluminum ingot of foreign origin was sold in the United States market to others than Alcoa to an average extent of approximately 10 percent of the virgin ingot market. Avers that the United States has no knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16, and avers that all of said allegations are speculative and conjectural.

19. Answering Paragraph 17 of the Petition, avers that the United States is without knowledge or information sufficient to form a belief as to the quantity of aluminum scrap (exclusive of process scrap) consumed in the domestic market in 1943, 1944, 1945, and 1946, or the amount which will be consumed in said market in the future. Denies all other allegations of Paragraph 17 of the Petition. Alleges that Alcoa's dominance and control of the virgin aluminum-ingot market of the United States is not affected
118 by the amount of aluminum scrap (exclusive of process scrap) consumed in the United States.

20. For answer to Paragraph 18 of the Petition, denies all of the allegations thereof. Alleges that Alcoa's dominance and control of the aluminum ingot market precludes the leasing and profitable operation by Reynolds of the two additional pot lines at the Jones Mills smelting plant. Alleges that the War Assets Administration has rejected all bids for the Los Angeles aluminum plant, and has decided to dismantle said plant.

21. For answer to Paragraph 19 of the Petition, in addition to the averments in Paragraph 1 of this answer, avers that the United States is without knowledge or information sufficient to form a

belief as to the rate at which Alcoa is currently smelting aluminum, or whether said rate approximates Alcoa's present ability to produce. Admits that there is a current shortage of soda ash and that expanded facilities for its production are under construction. The United States is without sufficient knowledge or information to form a belief as to the construction of expanded facilities for the production of soda ash, or whether the current shortage of soda ash is considered by the chemical industry to be temporary. Denies all other allegations of Paragraph 19 of the Petition. Avers that, said allegations are conjectural and speculative.

22. Answering Paragraph 20 of the Petition, admits the allegations thereof except the allegation that the reduction in the price of aluminum pig from January 1, 1939, was made possible by improved methods of manufacture and economies incident to expanded production. Alleges that the price of aluminum pig on January 1, 1939, was imposed and exacted by Alcoa's monopoly, and that reductions in price since 1939 were in large part the result of the entry of Reynolds into the smelting of aluminum and the desire of Alcoa to discourage and hamper this potential competition, the pendency and trial of the antitrust suit against Alcoa, the construction of aluminum plants by the United States, and the threat of competition from future operators of Government-owned plants. Admits that metals competitive with aluminum have increased in price since 1939 and that the present market for 119 aluminum at existing prices is greater than the market in 1939 at prices then charged by Alcoa. Alleges that the truth of the last allegation in Paragraph 20 of the Petition will depend in large part upon whether competitive conditions, free of control and dominance by Alcoa, can be treated in the aluminum industry.

23. Answering Paragraph 21 of the Petition as amended, admits that Exhibit 11 therein referred to is a copy of a news release issued by War Assets Administration, but denies that said news release is competent evidence of the matters referred to therein.

24. The United States denies each and every allegation of the Petition not herein admitted, controverted, or specifically denied.

25. Avers that as hereinbefore more particularly alleged the Petition fails to state facts showing that Alcoa no longer has a monopoly of the aluminum ingot market or that competitive conditions have been restored in the aluminum industry, and that said Petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

26. For a second and separate defense to the Petition herein, the United States alleges that Alcoa's monopoly of the aluminum

ingot market has not been terminated and competitive conditions have not been created or established in said market; and that Alcoa possesses the power to monopolize said market and to suppress, limit, control and eliminate competition in the aluminum industry.

27. Alcoa's financial and physical resources and strength are greater now than ever before. Alcoa has greatly expanded its facilities and equipment since 1939, and has fully amortized the cost thereof. It has no funded debt or long-term indebtedness, and at the end of 1946 has current assets of nearly one hundred thirty million dollars above its current liabilities, more than forty-three million dollars of which was in cash and marketable securities. In addition, the stockholders who control Alcoa also control Aluminium, Ltd., of Canada, which has facilities for 120 the production aluminum ingot and pig greater than those owned by Alcoa in the United States. By reason of the close relationship of Alcoa and Aluminium, Ltd., Alcoa can secure from Aluminium, Ltd. large quantities of ingot and pig at prices and on terms and conditions more favorable to Alcoa than can be secured by Reynolds or Kaiser, or other fabricators of aluminum in the United States. The value of plants and equipment owned by Reynolds and Kaiser is but a small fraction of the value of the plants and equipment owned by Alcoa. Reynolds and Kaiser have large funded or long-term indebtedness, and do not possess financial resources sufficient to enable them to acquire the Government-owned plants which they now operate, to fully utilize the plants which they now own or which are in their possession, to acquire or construct additional plants and facilities necessary to competitive integration, to acquire adequate or assured long-term supplies of power and bauxite and other essential materials at costs competitive with those of Alcoa, to develop sufficient outlets for their present production, or to effectively compete for the existing market for aluminum ingot.

28. Alcoa's productive facilities are more favorably located with respect to raw materials, power, markets, transportation and coordinated operation than are those of Reynolds and Kaiser. The locations of Alcoa's plants and facilities were carefully selected to obtain low cost power, proximity to the principal markets, low transportation costs (for raw and intermediate materials as well as finished products) and better coordinated operations or integration (both vertical and horizontal). The Government-built plants now being operated by Reynolds and Kaiser were constructed for the purpose of satisfying wartime requirements for aluminum without regard to post-war competitive requirements, and said plants were not designed or located for coordinated operation or integration with other plants in competition with Alcoa.

29. Alcoa possesses important advantages over Reynolds and Kaiser by reason of its fifty years of experience and knowledge in production, research and sales, compared to the limited experience and knowledge gained by Reynolds over a period of but a few years and by Kaiser in less than one year. Alcoa is the owner of numerous valuable and important
 121 patents covering machines, processes and products which must be used by other producers of alumina, aluminum ingot and pig, and fabricated aluminum. Alcoa's greater technological experience and know-how, and its patent position, gives it a very important competitive advantage over Reynolds and Kaiser.

30. Alcoa's supplies of bauxite are larger in quantity, higher in quality, and available at lower cost and on more favorable terms and conditions than are those of Reynolds and Kaiser. Kaiser is entirely dependent upon Alcoa for its bauxite. Reynolds depends upon limited reserves of low-grade bauxite in Arkansas, which can be utilized only in the Hurricane Creek alumina plant owned by the United States.

31. Alcoa has acquired or otherwise controls the most economic sources of power for aluminum production in the United States, and a substantial advantage over Kaiser and Reynolds both as to the cost and availability of power.

32. Alcoa possesses a horizontally and vertically integrated structure which is far more complete and efficient than that of either Reynolds or Kaiser. Alcoa's integration embraces the ownership of extensive high-grade bauxite deposits and operations, an ocean transportation system, power facilities, railroads, alumina plants, reduction plants, fabricating facilities for every major type of aluminum product, extensive research facilities, and a large, thoroughly organized and efficient nationwide sales organization. Reynolds has made some progress toward integration, but not to an extent comparable or competitive with that of Alcoa. Kaiser produces only alumina, aluminum ingot and pig, and aluminum sheet. It depends upon Alcoa as a source of bauxite, and does not engage in any fabricating operations other than the production of sheet, and is at a serious competitive disadvantage in this respect.

33. During the period of fifty years in which Alcoa was substantially the exclusive source of supply of aluminum ingot and aluminum products in the United States, Alcoa developed contacts and relationships with users of aluminum ingot and aluminum products which impose a serious handicap upon Kaiser and Reynolds in their efforts to sell their products to said users.

34. By reason of the elimination of its funded debt and the amortization of its facilities and equipment, the location
 122 of its productive facilities with respect to raw materials.

power, markets, transportation and coordinated operations, its technological experience and know-how and its patent position, the quantity, quality and cost of its bauxite, its control over power sources and favorable contracts relative to supplies thereof, its horizontal and vertical integration, and for other reasons, Alcoa's costs of production and sale of alumina, aluminum pig and ingot, and aluminum products, are substantially below those of Kaiser and Reynolds.

35. By reason of the factors alleged in Paragraphs 27 through 34 hereof, Alcoa possesses the power to fix and determine the prices at which aluminum ingot and aluminum products are sold in the United States market, to prevent and suppress price competition in said market, to completely monopolize the sale of aluminum ingot to independent fabricators in said market, to determine the share of the market for aluminum ingot and aluminum products which Reynolds and Kaiser may obtain, and to eliminate Reynolds and Kaiser from the aluminum industry.

THIRD DEFENSE

36. For a third and separate defense to the Petition the United States alleges that the conditions precedent to a proceeding to determine whether final judgment should be entered ordering or precluding dissolution of Alcoa or other appropriate remedy, have not occurred.

37. Substantially all of the facilities for the production of aluminum ingot owned by the United States at the date of the decision of the Circuit Court of Appeals in this cause, are still owned by the United States and have not been finally disposed of.

38. The competitive program for the aluminum industry submitted to the Congress pursuant to the mandate of the Surplus Property Act of 1941, c. 479, 58 Stat. 765, Section 19, 50 U. S. C. § 1628, and approved by the Congress by failure to reject the same within 60 days after its submission, has not been fully executed, and its success or failure as a means of restoring competitive conditions in the aluminum industry has not been determined.

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FOURTH DEFENSE

39. For a fourth and separate defense to the Petition the United States alleges that the Petition was prematurely filed.

40. It cannot now be determined who will own and operate Government-owned aluminum plants. The Government still owns most of the aluminum plants which it constructed. Some of said plants are being operated by private concerns under letters of intent or agreements to lease, which are temporary in their nature, for short terms, and subject to cancellation. There is a reasonable possibility that some or all of the plants now being

operated by private concerns other than Alcoa will not be purchased by said concerns, but will ultimately be retained by the United States in a non-operative stand-by status for reasons of national defense, or will be dismantled or will be sold to Alcoa.

41. The actual production under normal market conditions of aluminum plants now in the possession of concerns other than Alcoa cannot now be determined. Some of said plants have not yet been placed in production by said concerns; most of said plants which have been placed in production have been operated by said concerns for periods of from a month to a year; and no sufficient history of production exists from which the probable production of said plants can now be determined. It is therefore impossible to determine the quantitative relationship under normal conditions between the production of Alcoa and that of concerns other than Alcoa.

42. Since the date of the filing of the Petition in this matter, there has been a sharp and substantial reduction in demand for aluminum ingot and pig, and fabricated products. Reynolds has been forced to close down one aluminum smelting plant, and Kaiser has been prevented from commencing operations at its Tacoma smelting plant. These two companies, since the middle of April, have been unable to dispose of their ingot production, either by consumption in their own fabricating plants or by sale, and they both have such large inventories on hand that they may be forced to further curtail production. The reduction in demand has not injured Alcoa, which still is able to dispose of all of the ingot and pig which it can produce, and ingot and pig purchased by

124 Alcoa from other sources. It is impossible to prophesy whether demand will again rise to a point where Reynolds and Kaiser can dispose of their production of ingot and dispose of their excessive inventories, or whether these two companies or either of them will have to close down additional production facilities with resultant serious injury both financially and competitively. Up to the middle of April, the aluminum industry was operating on an abnormally large backlog of orders to fill a demand for aluminum which had been accumulated over a period of years and up to that time, there was no actual competition among producers of aluminum ingot and pig, since the demand for these products exceeded the ability of the producers to supply the same. A large part of this accumulated demand has now been satisfied, and for the first time since 1940, the aluminum industry must depend principally on current demand for aluminum and aluminum products. Until sufficient time has elapsed to ascertain the extent and nature of this market, and the ability of Reynolds and Kaiser to compete with Alcoa in supplying said market, it is impossible to determine whether the monopoly of

Alcoa has been ended, its effects dissipated, and effective competition established.

43. It cannot now be determined what portion of the actual productive capacity of aluminum plants now in the possession of concerns other than Alcoa can be profitably operated in a normal market in competition with Alcoa.

(a) The aluminum market has been an abnormal one, and neither the quantity or nature of the normal demand, nor the prices which will prevail under normal conditions can now be determined.

(b) Normal international trade has not been restored, and the supplies of alumina, aluminum pig and ingot, and aluminum products which will reach the aluminum market of the United States from foreign sources, and the effect which said supplies will have upon said market and the prices therein, cannot now be determined.

(c) It cannot now be determined whether Reynolds and Kaiser will be able to produce and sell aluminum and aluminum products at costs which will permit them to compete with Alcoa.

125 44: It cannot now be determined whether processes and machines essential to the production of alumina, aluminum ingot and pig and aluminum products, covered by patents owned by Alcoa, will be made available to concerns other than Alcoa on terms and conditions which will enable said concerns to compete effectively with Alcoa.

45. It cannot now be determined whether concerns other than Alcoa will be able to obtain adequate long-term supplies of power and of bauxite and other essential materials which will enable them to remain in the industry and to permit them to compete effectively with Alcoa.

46. It cannot now be determined whether concerns other than Alcoa can develop a sufficiently integrated structure to enable them to compete effectively with Alcoa.

47. It cannot now be determined whether concerns other than Alcoa will be able to finance their efforts to achieve a competitive position in the industry and to withstand the impact of competition with the financially powerful Alcoa. The efforts of said concerns to operate and develop the facilities now in their possession, to acquire ownership of said facilities, to construct and acquire additional facilities essential to competitive integration, to acquire adequate long-term supplies of power and bauxite and other essential materials, and to develop an outlet for their production, imposes a tremendous financial burden upon said concerns, particularly because of Alcoa's dominance in and control over the aluminum industry.

48. It cannot now be determined whether concerns other than Alcoa will be able to overcome the advantage which long expe-

rience in the production and sale of aluminum has given Alcoa. Alcoa's half-century of monopoly and exclusive operation in the aluminum industry has given Alcoa so substantial an advantage with respect to technical aspects of production, entrenched position in the market and with suppliers, efficiency of distribution, and development of new techniques and processes, that it cannot now be determined whether concerns other than Alcoa will be able to overcome it.

49. Alcoa has not been, is not, and will not be injured or hampered in its ability to compete, to expand production and sales, or to profitably engage in the aluminum industry by reason of the existence of the present decree. Alcoa's financial and physical resources and its production and sales of aluminum and aluminum products have increased tremendously since the trial of the case herein. Alcoa has made and is now making profits from its aluminum operations greater than those which it made prior to this litigation. Since the trial herein, Alcoa has paid off its funded indebtedness and has amortized the cost of its plants, including the expanded facilities. Alcoa is able to sell all of the aluminum which it can produce, as well as aluminum secured from other sources. The present decree does not inhibit or prevent further expansion by Alcoa, and Alcoa is presently engaged in expanding its productive facilities. Alcoa has no need for a judgment of the nature sought by Alcoa and no right to such judgment until such time as it can be definitely established that Alcoa cannot use its power to suppress competition and to monopolize the industry, and such a showing has not been made and cannot be made by Alcoa at the present time. The public interest would be seriously injured and prejudiced by the entry of the judgment prayed by Alcoa.

Wherefore, the United States prays judgment that the Petition of Aluminum Company of America be dismissed, with costs to the United States.

Dated June 12, 1947

GEORGE B. HADDOCK,
Special Assistant to the Attorney General.
JAMES R. BROWNING,
Special Attorney.

JOHN F. SONNETT,
Assistant Attorney General.

HOLMES BALDRIDGE,
Special Assistant to the Attorney General.

JOHN F. X. MCGOHEY,
United States Attorney,
Southern District of New York, New York, New York.

100 UNITED STATES VS. U. S. DIST. CT., SOUTHERN DIST. OF N. Y.

Appendix "I" to petition

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Aluminum Plants And Facilities

**REPORT OF THE
SURPLUS PROPERTY BOARD
TO THE CONGRESS**

September 21, 1945

7

LETTER OF SUBMITTAL

SURPLUS PROPERTY BOARD,
Washington 25, D. C., September 21, 1945.

The Honorable PRESIDENT OF THE SENATE,
The Honorable SPEAKER OF THE HOUSE OF
REPRESENTATIVES.

SIRS:

We submit herewith in accordance with Section 19 of
the Surplus Property Act of 1944 a report with respect
to Government-owned aluminum plants and facilities.

Respectfully submitted.

THE SURPLUS PROPERTY BOARD,

W. Stuart Symington

W. STUART SYMINGTON, *Chairman.*

Robert A. Hurley

ROBERT A. HURLEY, *Member.*

LETTER OF SUBMITTAL

Dear Sirs:

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above mentioned matter.

The same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Signature]

Enclosed for you are two copies of the report of the committee.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Signature]

Very truly yours,
J. H. [Signature]

Enclosed for you are two copies of the report of the committee.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Signature]

Very truly yours,
J. H. [Signature]

Enclosed for you are two copies of the report of the committee.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Signature]

Very truly yours,
J. H. [Signature]

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SUMMARY

I. INTRODUCTION

1. Under the Surplus Property Act of 1944 it is the duty of the Surplus Property Board to dispose of Government-owned aluminum plants with a view to hastening reconversion, providing employment, aiding the national defense, promoting competition, and fostering new and independent enterprise.
2. Conditions within the aluminum industry make plant disposal, according to the objectives of the Act, difficult although not insurmountable. These conditions arise from the controlling position in the industry of the Aluminum Co. of America (Alcoa).
3. In this interim report, the Board outlines three disposal programs. The first—noncompetitive—is acceptable to Alcoa but not to the Board. The second program comprises measures that might not succeed and might postpone the solution of the disposal problem. The third—a competitive plan—recommends a comprehensive course which, it is hoped, will succeed in permanent disposal according to the objectives of the Surplus Property Act.

II. GOVERNMENT INVESTMENT IN ALUMINUM PLANTS AND FACILITIES

4. The Government investment represents a major portion of the wartime capacity of the aluminum industry and extends into practically every field. Much of the capacity is uneconomical for postwar use by private enterprise but may have other disposal values, including stand-by service for the national defense.
5. The Federal investment aggregates \$739 millions of which \$34 millions are loans by the RFC, \$703 millions are in plants and facilities owned by the RFC, and a little over \$2 millions are in plants and facilities owned by the Navy Department. The investment in plants and facilities costing not less than \$5 millions each amounts to \$608 millions.

III. ECONOMIC PROBLEMS CREATED BY DISPOSAL

Background Review

6. Although a small industry, aluminum is highly strategic. The maximum prewar tonnage of primary aluminum was reached in 1939 but was only a small fraction compared to copper production and less than 1 percent compared to steel output. During the war, primary aluminum capacity expanded 6 times, and employment in the entire aluminum industry increased from about 85,000 to 180,000. But 2 million workers during the war learned how to process aluminum and magnesium.
7. The United States has over 40 percent of world primary aluminum capacity and Canada controls 25 percent. These proportions may be changed by the disposal of enemy capacity and by the disposal of commercially uneconomical capacity built during the war in various countries. However,

the lessons of air power are expected to cause other nations to develop to a maximum their light metal industries. Our own national security will therefore justify measures necessary to promote a large and healthy American aluminum industry.

8. The aluminum industry consists of various stages: mining bauxite, converting it into alumina, reducing alumina to metal, converting metal into semi-fabricated and finished end-products, and recovering scrap for conversion into secondary metal.
9. Both at home and abroad, the industry has been characterized by the absence of free competition, the vertical integration of the most economical producers, large investments by such producers, cartel activities, and either the existence of monopolies, or a few companies, or Government ownership in various countries. Alcoa and its Canadian affiliate, Aluminium Limited (Aited), dominate the world industry, controlling 64 percent of the primary capacity in 1944.
10. During the war, Alcoa expanded its capacity materially, and built and operated for the Government most of the Federal capacity. The Reynolds Metals Co. entered the industry as the only competitor in primary aluminum. Reynolds has serious problems of strengthening its postwar position in the matter of bauxite supply and economies in production costs. Alcoa is materially stronger than before the war, controls 84 percent of the privately owned primary capacity, and has the powerful competitive weapon of low-cost Canadian aluminum which it can move into world and domestic markets, despite the present United States tariff of 3 cents per pound. Aited is now the largest producer in the world, and has the lowest production costs because of subsidized war expansion in which the United States participated with other Governments.

The Economic Problems

11. Under the Surplus Property Act and in view of the background of the aluminum industry, disposal policies should be directed toward promoting competition. On March 12, 1945, Alcoa was adjudged by the United States Court of Appeals for the Second Circuit sitting as a special court under 15 U. S. C. 29, as amended, to have been a monopoly in the production of ingot as of 1940. The question of possible dissolution of the company was deferred pending determination of the effects upon competition of the disposal policies of the Surplus Property Board.
12. Competition in the aluminum industry will foster employment and the national defense. The existence of additional producers would increase the number of operating plants and reduce production bottlenecks and hazards of interruption arising in time of emergency.
13. Competition will also help aluminum fulfill one of the brightest opportunities for market expansion in the history of industrial materials. Industrial consumers indicate widespread intentions to increase the use of the metal, the extent of the expansion depending upon price reductions and additional sources of supply of primary metal. The automobile industry is especially expected to increase the use of aluminum if its dependence on one producer can be materially reduced.
14. New competition in primary metal requires independent sources of high-grade bauxite. Control of domestic reserves, held largely by Alcoa, will force competitors to seek foreign ore. An interim supply, however, is immediately available in the Government stockpile of medium-grade ore located near the Government alumina plant at Hurricane Creek, Ark.,

and in the reserves of similar ore held by independent mining companies in that state. New primary metal producers can probably obtain from this plant enough alumina to permit independent operation for at least 8 years and possibly longer. In the interim, they can arrange for foreign ore with the possibility that some may be obtained through arrangements by Federal agencies with foreign governments.

15. Disposal of many plants is complicated by disadvantageous locations, capacities far in excess of immediate markets, and the need for changes in equipment. These handicaps may be remedied, where feasible, the RFC financing the costs of improvements. Also, terms of lease or sale should be adjusted to reflect actual earning power based on ability of a plant to compete. Equipment may be moved to better locations if the costs are recoverable.
16. Inflexible contracts for the sale of Federal power in the Tennessee Valley and Pacific Northwest result at times in high costs of power for aluminum production. This makes more difficult the disposal of Government plants, puts Reynolds at a disadvantage compared with Alcoa, and places all American producers at a disadvantage in competing with Canadian aluminum which is produced at subsidized power costs. It is, therefore, desirable that those who take over Government plants be in a position to negotiate more flexible power contracts. If the existing laws governing the rates on Federal power prevent the negotiation of power contracts of this kind, it is suggested that Congress may wish to consider, in the interest of national security, a modification of those laws so far as they relate to the use of power for the production of strategic and critical products essential to the national defense.
17. The maximum economical primary aluminum capacity of the country is about five times greater than 1939 markets and far in excess of immediate postwar markets. The total economical capacity is 1.5 billion pounds of which Alcoa holds 828 millions, Reynolds 162 millions, and the Government 512 millions. An additional 148 millions of Government capacity may become economical at a later date. Market studies indicate a possible requirement of 1 billion pounds of primary metal 5 years after the war, supplemented by 600 million pounds of secondary metal, provided the price of primary is 12 cents per pound and secondary ingot sells at 6 to 8 cents.
18. New producers could enter domestic markets in the first few postwar years provided they have some fabricating outlets. They should benefit from intentions of industrial consumers to reduce their dependence upon one source of supply. They may also be able to share foreign markets, regardless of Alcoa's controlling position, depending upon international trade agreements that may be reached and the reconstruction programs of members of the United Nations, particularly China and Russia. Furthermore, the Army and Navy Munitions Board has recommended a stockpile of primary aluminum and bauxite for national defense, and a portion of that stockpile can be provided by new producers, thus giving them an additional cushion for production.
19. The key to disposal to private enterprise of the largest possible amount of the Government investment lies in bringing a new producer into the Hurricane Creek alumina plant, preferably one who also will operate reduction capacity. The output of alumina should be made available to other producers taking over Government reduction plants at or near cost in order to

permit competition with Alcoa. Economies of large-scale production would justify such an arrangement to the operator.

20. The disposal of alumina and reduction plants has been complicated by terms of the lease agreement between RFC and Alcoa. The terms permitted either party to cancel the arrangement if production in any 6-month period fell below 40 percent of the aggregate productive capacity of all plants covered by the lease. The production of the plants had been below 40 percent for the 6-month period ending August 31, 1943. On September 1, a new 6-month period would have begun in which production might not have fallen below 40 percent. Therefore, unless RFC had canceled the lease by August 31, Alcoa might have remained in possession of most of the plants until 1948. It would not have been possible under those circumstances without Alcoa's consent to make any arrangements to sell or to lease any of these plants to anyone else before 1948.

On August 30, the RFC notified Alcoa of the cancellation of the lease on the recommendation of the Surplus Property Board. Under the lease the cancellation was to be effective in 60 days. In the interests of continuity of employment and of keeping the plants in operating condition, RFC offered to make an arrangement with Alcoa whereby it would continue to operate the plants for a year, subject to the right of either party to cancel on 60 days' notice. Alcoa declined to make an arrangement of this kind and stated that the company was not interested in making a temporary arrangement of any kind for the operation of the plants.

On September 7 and 8, Alcoa shut down operation of the reduction plants and initiated steps to close the Hurricane Creek alumina plant within a few weeks. However, Alcoa has advised the RFC that it will leave working inventories of raw materials in the plants and will negotiate for licensing the use of any patented equipment and processes.

The lease situation is more favorable in the case of fabricating plants, and cancellation of contracts can be accomplished within a few months, subject to purchase options or rights of first refusal. The Alcoa leases do not contain any of these rights but provide for the right of cancellation on 90 days' notice after armistices have been made with the major combatants.

21. Possibly 3 billion pounds of aluminum inventories may hang over postwar markets for a number of years, much of it subject to disposal policies of the Surplus Property Board. If released in too short a period, this supply would disrupt markets and force a substantial curtailment of primary production. The problem is to control disposal over a period of years in order (1) to promote expanded and new uses of aluminum; (2) to spread the supply widely through industrial channels; (3) to prevent any single company from obtaining an undue proportion of the supply or hoarding it; (4) to sustain a low price level for secondary ingot that will promote expanded and new uses; and (5) to release quantities in such amounts that the primary industry continues in production at some level that will not destroy the incentive for new producers to enter.
22. To achieve the foregoing purposes, the Board proposes to (1) publish periodic statements of secondary supply to enable industrial consumers to plan production schedules; (2) maintain a price schedule on surplus metal that should assure an adequate supply of secondary ingot at a low price, the exact figure to be determined in consultation with industrial users; and (3) to spread the supply of Government metal in order to foster competition.

IV. ALTERNATIVE DISPOSAL PROGRAMS

23. Candidates expressing interest in Government alumina and reduction plants include Alcoa, American Smelting & Refining Co., Reynolds Metals Co., Kaiser Co., Inc., Bohn Aluminum & Brass Corp., Olin Industries, Inc., and Columbia Metals Corp. Little interest has thus far been shown in major fabricating plants, but a few companies have indicated interest in acquiring smaller fabricating plants or equipment. Some inquiries also have been received from representatives of foreign corporations or Governments.
24. No detailed disposal campaign has yet been undertaken by the Surplus Property Board and RFC because it was necessary first to determine policies. With the adoption of the policies recommended in this report, an aggressive campaign to arouse more interest can be launched. Another interim or final disposal report will then be made to Congress.
25. Discussions have been held with Alcoa in an effort to find a mutually satisfactory program. But the program acceptable to Alcoa is unacceptable to the Board. Alcoa wishes to purchase the best of the Government reduction plants and to buy or lease the Hurricane Creek plant. In the case of a lease, Alcoa would agree to sell alumina to others at a price fixed by RFC. Alcoa would agree to operate all of its plants at the same rate of capacity. It was assumed that imports of aluminum from Canada and elsewhere would provide adequate competition with Alcoa.
26. The Board finds that (1) this program would increase rather than decrease the Alcoa monopoly; (2) it would prevent the expansion of production and employment that would result from more competition; (3) Alcoa does not expect to need additional primary capacity for at least 5 years and has already planned substantial cutbacks in primary production by the end of this year; and (4) imports from Canada or elsewhere are not an adequate solution of the monopoly problem; for one thing, reliance upon foreign sources for aluminum would deprive American workers of opportunities for employment.
27. The Board has considered a second course of action that would leave up to new operators much of the responsibility for meeting the difficult problems such as securing bauxite, bearing costs of preparing plants for competitive operation, and developing markets. This course would probably fail to dispose of plants to any material extent to the end of promoting a competitive industry; the field of candidates would be highly restricted and chances of survival would be poor. The Board therefore rejects such a program.
28. The Board recommends the following program which it will follow, subject to any contrary indication from Congress in accordance with Section 19 of the Act:
 - a. A system of priorities on disposal will be established in the following order: (1) competitors of Alcoa; (2) Alcoa to have certain facilities, subject to approval of the Attorney General, but only on terms that confer no competitive advantage; (3) stand-by service for national defense as recommended by the War and Navy Departments; (4) private enterprise for use in other industries; and (5) export to members of the United Nations.
 - b. Bidders will be given preference in accordance with competence and prospective ability to survive.
 - c. A plan for disposal of individual plants or groups of plants is given in detail in this report, based on present candidates and others that may become interested, and in accordance with the priorities above.

- d. Disposal of key plants will initially either be by sale or lease with option to purchase. Other plants will be sold or leased according to individual circumstances. Rentals and prices will be fixed with due regard to earning ability and not necessarily with regard to original cost or other valuations. Terms can be offered as favorable as were given Alcoa under the original lease by which the RFC stands, the risk of losses, and profits are shared with the Government, subject, however, to review and approval by RFC of (1) the price at which metal is sold; (2) top salaries; and (3) extraordinary expenses. Should operators wish a larger share of profits, terms may call for them to assume a greater amount of risk. In any event, the RFC will require that the operators assume reasonable risks of working capital and that the Government withdraw its assumption of risks after some fair period.
- e. The Board will help new producers as follows: (1) the supply of bauxite owned by the RFC will be available at Hurricane Creek, and inquiries will be made to determine whether foreign ore can be obtained under international agreements or other arrangements; (2) the RFC will finance necessary changes in plants in order to improve their competitive position, where costs appear to be recoverable; and (3) control over supplies of secondary metal will be maintained as indicated.
29. The Board believes that this program is more likely to achieve the purposes of the statute than any other. The Board recognizes, however, that conditions beyond its control may make the program impossible of accomplishment. In that event, unless the courts dissolve or reorganize Alcoa under the Sherman Act, Congress will have to consider whether to leave the aluminum industry under the domination of one company or whether to authorize the Government, either by subsidized or direct operation of key plants, to provide some measure of production that is independent of Alcoa's control.

Part I

INTRODUCTION

Section 19 of the Surplus Property Act of 1944 requires a report to Congress on the Government-owned aluminum plants and facilities (among other classes of property) which cost not less than \$5,000,000 each. This report is required to contain three sections:

- (A) Describing the amount, cost, and location of the property and setting forth other descriptive information relative to the use of the property;
- (B) Outlining the economic problems that may be created by disposition of the property;
- (C) Setting forth a plan or program for the care and handling, disposition, and use of the property consistent with the policies and objectives set forth in this act.

In the act, Congress directed the Surplus Property Board to dispose of property according to the following objectives: To facilitate conversion to peacetime production, to provide employment, to aid the common defense, to promote competition, and to foster new and independent enterprise. Conditions within the aluminum industry make the achievement of these objectives a difficult, although not an insurmountable, task. For nearly 50 years before 1941 the Aluminum Co. of America (Alcoa) was the sole producer of primary aluminum in this country. Since 1941 the Reynolds Metals Co. has been producing primary aluminum in competition with Alcoa. The position of Alcoa is still so dominant that it constitutes the greatest problem before the Board in submitting to the Congress a disposal program consistent with the policies and objectives of the act.

The key plants to be disposed of produce alumina and aluminum. All but one have been under lease to Alcoa. Their disposal is complicated by large capacities, in some cases by disadvantageous locations, by inflexible power contracts, and by the problems of reopening shut-down plants.

An especially difficult problem is assurance for any new producers of a permanent supply of the raw material, bauxite. Disposal of the fabricating plants presents other problems but will be partly influenced by disposal of the basic plants.

Furthermore, the powerful position of Alcoa is a factor recognized by others interested in entering the aluminum industry by taking over Government plants. To date only a few candidates have shown substantial interest. The problems before the Board are difficult with respect to bringing them into the industry on terms that will permit successful survival.

This report outlines three courses of action that have been considered by the Surplus Property Board. Under the first course the best plants would be turned over to Alcoa in accordance with a plan that the Chairman of the Board of Alcoa has indicated would be acceptable in his discussions with a representative of the Surplus Property Board. This plan would not be consistent with the objectives of the Surplus Property Act. The second course is a program that would require some years to demonstrate the survival ability of any new operators. It might or might not succeed in carrying out the objectives of the act. If it failed, the key plants would revert to the Government, creating a disposal problem once again. The third course of action, therefore, is a comprehensive program which, it is hoped, will succeed in permanent disposal to new operators.

The Surplus Property Board recommends the third course of action to the Congress and will follow it unless the Congress directs otherwise under section 19 (c) of the act.

Part II

GOVERNMENT INVESTMENT IN ALUMINUM PLANTS AND FACILITIES

The Government investment in the aluminum industry represents a major portion of the wartime aluminum capacity of the United States. A substantial part of this capacity is uneconomical for postwar use by private enterprise in this country although of possible value for stand-by service to the national defense or for other purposes.

Altogether, the Government has invested now \$739 millions in the industry of which \$34 millions were placed in loans to private enterprise by the Reconstruction Finance Corporation and \$702 millions were put into plants and facilities owned almost entirely by the Reconstruction Finance Corporation (through the former Defense Plant Corporation). The Navy Department owns a little over \$2 millions in plants and facilities.

The following tabulation shows the distribution of the investment among the various classes of products or facilities. A negligible amount of bauxite mining equipment was financed by the Government. The principal investments were made in alumina plants processing bauxite (\$91 millions); primary aluminum or reduction plants (\$215 millions); and three classes of fabricating plants: Sheet, strip, and plate (\$112 millions), forgings (\$85 millions), and extrusions (\$102 millions). But in all other important parts of the industry some investment was also made.

The Government owns a total of 52 plants, some related housing and power facilities, and equipment in 37 privately owned plants.

Including the uneconomical portions of the investment, the tabulation below shows that the Government held over half of the wartime capacity in alumina (the material from which the metal is made), primary aluminum, cylinder heads (for airplanes), extruded rod and bar, and powder (for munitions). In most of the remaining classes of fabricated products, the Government capacity was substantial, especially in the basic fields of sheet, rolled rod and bar, and forgings.

Government investment in the United States aluminum industry

(Dollars in thousands)

Product or type of facility	Total	Defense Plant Corporation plants		Defense Plant Corporation scrambled facilities		Loans of Reconstruction Finance Corporation		Navy plants and scrambled facilities	
		Amount	Number	Amount	Number	Amount	Number	Amount	Number
Total.....	\$738,732	838,869	450	\$63,400	34	\$34,185	3	\$2,308	5
Bauxite mining and stripping equipment.....	210	210							
Alumina from bauxite.....	91,372	85,018	2	36,339	2	(9)	1		
Alumina from other ores.....	14,717	14,717	4						
Primary aluminum:									
Reduction plants.....	215,000	180,854	9			34,155	2		
Power facilities.....	10,179	10,179							
Housing.....	7,513	7,513							
Sheet, strip, and plate.....	111,988	111,988	113						
Rolled rod and bar.....	23,198	23,199	112						
Tubing.....	2,000	(12)	113	2,000	112				
Forgings.....	84,836	73,630	118	11,197	119				
Castings:									
Sand (excluding cylinder heads).....	18,804	4,87	2	14,229	114				
Permanent mold.....	3,360	3,018	1	384	3				
Cylinder heads.....	50,134	41,069	6	9,065	115				
Extrusions.....	102,181	102,161	117						
Rivets.....	512	512	6						
Powder.....	2,941	226	2	67	1			1,738	2
Miscellaneous ordnance.....	570							570	3

¹ Disbursements less sales, transfers, etc., as of May 31, 1945.

² Disbursements less sales, transfers, etc., as of Apr. 30, 1945.

³ As of Apr. 30, 1945.

⁴ As of Mar. 31, 1945.

⁵ Does not include a small amount of investment in some forging, rivet, and powder facilities. See footnotes 16, 19, and 20.

⁶ Unduplicated total. See footnotes 11, 14, 15, and 18.

⁷ Does not include Reconstruction Finance Corporation loan for alumina facilities at Reynolds Metals Co., Listerhill, Ala. See footnote 8.

⁸ Not reported. The Reconstruction Finance Corporation loan to Reynolds Metals Co., Listerhill, Ala., is for both alumina and reduction facilities and the total amount is included under reduction plants.

⁹ Includes investment in alumina facilities at Reynolds Metals Co., Listerhill, Ala., plant.

¹⁰ Includes investment in rod and bar facilities of 60,000,000 pounds capacity.

¹¹ The Reynolds Metals Co., Listerhill, Ala., plant produces both sheet and rolled rod and bar but is counted as one plant in the total.

¹² Does not include investment in facilities of 60,000,000 pounds capacity included with sheet, plate, and strip.

¹³ Does not include investment in Alcoa and Reynolds tubing plants, all of which is included with extrusion.

¹⁴ The 3 tubing plants are also included under extrusion plants but each is counted as 1 plant in the total.

¹⁵ The Aluminum Co. of America, Vernon, Calif., plant produces both tubing and forgings but is counted as 1 plant in the total.

¹⁶ Does not include investment in forging facilities at General Electric Co., Fort Wayne, Ind. Investment in forging equipment inseparable from that for other products and was not reported.

¹⁷ The Reynolds Metals Co., Louisville, Ky., plant produces forgings, tubing, and extrusions but is counted as 1 plant in the total.

¹⁸ The Oberdorfer Foundries, Inc., Syracuse, N. Y., plant produces both sand castings and cast cylinder heads but is counted as 1 plant in the total.

¹⁹ Does not include investment in rivet facilities in 3 aircraft plants. Investment in rivet facilities inseparable from that for other products and was not reported.

²⁰ Does not include investment in powder facilities at National Smelting Co., Cleveland, Ohio. Investment in powder facilities inseparable from that for other products and was not reported.

Source: Reconstruction Finance Corporation and Navy Department.

Product	Percent of war-time capacity, Government owned	Product	Percent of war-time capacity, Government owned
Alumina from bauxite.....	32.2	Extrusions:	
Alumina from other ores.....	100.0	Rod and bar.....	59.2
Primary aluminum.....	57.2	Shapes.....	45.4
Sheet, strip and plate.....	40.5	Tube blooms.....	20.0
Rolled rod and bar.....	44.3	Rivets.....	25.1
Tubing.....	15.8	Powder.....	59.3
Forgings.....	44.7		
Castings:			
Sand (excluding cylinder heads).....	10.3		
Permanent mold.....	4.0		
Cylinder heads.....	69.4		

Source: Arranged from appendix 13a.

Plants and facilities costing \$5 millions or more each, represent the bulk of the Federal investment, a total of \$608 millions. They are individually listed in the following table. In Appendix 1, a brief description is given of all the plants owned by the Reconstruction Finance Corporation regardless of size of investment, except rivet and powder plants. This description, prepared by the RFC, indicates the current or recent operating status of each plant and contains some preliminary comments bearing on possible postwar uses of certain plants.

The alumina plants have provided the raw material for the reduction plants which in turn have supplied the metal to the various fabricating plants. The Government capacity for alumina just about equals the reduction capacity, while the total fabricating capacity well exceeds the reduction capacity. These relationships are similar to those in Alcoa's own plants, and represent a reasonably balanced overall distribution of capacity. However, because of the special war requirements for fabricated products, particularly for airplanes, the distribution of Government fabricating capacity among various classes is unrelated to peacetime market requirements. In general, most of the fabricating capacity is specialized and involves serious problems of converting plants to normal uses on an economical basis.

Government aluminum plants with investment of \$5,000,000 or more, and capacity

Plant and operator	Investment	Annual capacity (in pounds)
Total investment.....	\$608,016,000	
Alumina.....	91,372,000	(*)
Lime, soda, sinter facilities.....	26,350,000	(*)
Alcoa-owned plants:		
East St. Louis, Mo.....	12,648,000	(*)
Mobile, Ala.....	13,711,000	(*)

* Not measurable.

Government aluminum plants with investment of \$5,000,000 or more, and capacity—Continued

Plant and operator	Investment	Annual capacity (in pounds)
Alumina—Continued		
Bayer Process plants	355,613,000	2,535,000,000
Alcoa operated plants:		
Hurricane Creek, Ark.	29,331,000	1,535,000,000
Baton Rouge, La.	25,062,000	1,000,000,000
Reduction plants	180,854,000	1,390,753,000
Alcoa operated	174,543,000	1,339,594,000
Burlington, N. J.	16,708,000	103,708,000
Jonas Mills, Ark.	29,258,000	182,079,000
Los Angeles, Calif.	24,042,000	195,042,000
Queens, N. Y.	32,571,000	394,915,000
Riverbank, Calif.	11,667,000	109,980,000
Spokane, Wash.	22,270,000	218,794,000
Mamona (St. Lawrence), N. Y.	19,061,000	107,748,000
Troutdale, Oreg.	18,968,000	146,712,000
Olin Corp., Tacoma, Wash.	6,309,000	46,198,000
Sheet, strip, and plate	111,068,000	948,000,000
Alcoa operated	91,957,000	878,000,000
Chicago, Ill.	44,327,000	386,000,000
Spokane, Wash.	47,630,000	382,000,000
Reynolds Alloys Co., Listerhill, Ala.	20,091,000	72,000,000
Rolled rod and bar	25,198,000	369,000,000
Alcoa, Newark, Ohio	29,108,000	308,000,000
Reynolds Alloys Co., Listerhill, Ala.	(?)	60,000,000
Forgings	66,664,000	234,000,000
Alcoa operated	48,302,000	139,000,000
New Castle, Pa.	8,746,000	30,400,000
Canonsburg, Pa.	26,147,000	78,900,000
Monroe, Mich.	13,609,000	35,400,000
Aluminum Forgings, Inc., Erie, Pa.	9,485,000	14,400,000
General Motors-Chevrolet, Saginaw, Mich.	8,837,000	111,000,000
Cast cylinder heads	20,062,000	179,064,000
Alcoa, Kansas City, Mo.	3,335,000	26,000,000
Chrysler Corp., Dodge-Chicago Division, Chicago, Ill.	7,476,000	36,000,000
Ford Motor Co., Dearborn, Mich.	7,800,000	36,000,000
General Motors Corp., Buick Motors Division, Flint, Mich.	9,063,000	45,000,000
Wright Aeronautical Corp., Lockland, Ohio.	4,416,000	26,000,000
Extrusions	97,236,000	(?)
Alcoa operated	58,058,000	(?)
Crescent, Pa.	23,267,000	
Phoenix, Ariz.	31,651,000	shapes 44,000,000 tube blooms 12,072,000
Bohn operated:		
Adrian, Mich., No. 21	16,327,000	rod and bar 8,000,000 shapes 20,000,000
Los Angeles, Calif.	4,140,000	rod and bar 1,704,000 shapes 11,494,000
Extruded Metals, Inc., Grand Rapids, Mich.	6,775,000	rod and bar 13,320,000 shapes 8,400,000 tube blooms 1,114,000
Revere Copper & Brass Corp., Baltimore, Md.	7,290,000	rod and bar 32,004,000 shapes 8,400,000 tube blooms 8,888,000

Source: Condensed from Appendices 13b-13g.

1 Includes investment in rod and bar facilities of 50,000,000 pounds capacity.
2 Investment in rod and bar facilities of Reynolds Alloys Co., Listerhill, Ala., included with that for the sheet mill.

3 Includes investment in tube drawing facilities.

4 Capacities for the 3 products cannot be added because they are for alternative products of the same extrusion equipment.

5 Some of the extrusion machinery has been removed and plant has been leased for use as an ordnance repair depot.

Part III

ECONOMIC PROBLEMS CREATED BY DISPOSAL

A background review of the aluminum industry is necessary for an understanding of the economic problems created by disposal of the aluminum plants and facilities.

A: BACKGROUND REVIEW

A Highly Strategic But Small Industry

Despite the invention of the atomic bomb, the national defense of the United States still rests heavily upon aluminum. Upon it our air power has been built. This metal forms nearly three-fourths of the weight of military aircraft. Nearly all of the output used in this country after 1941 has been put to war: Over two-thirds for airplanes, and most of the balance for such various uses as landing mats, floating bridges, ammunition and incendiary bombs, ships, and containers and foil for packaging. This country must plan its international welfare and security with due recognition of the highly strategic position occupied by aluminum.

During the war, the primary aluminum capacity of the country expanded six times, but still the industry is relatively young. Just before the war, it was little more than an infant in size, although 51 years old in 1939. In that year, only 184,000 short tons of primary aluminum were produced—a fraction of 1 percent of the steel tonnage and but a sixth of the copper tonnage (appendix 2). The capacity figures showed a greater contrast—82,000,000 tons of steel capacity, 1,600,000 tons of electrolytic copper capacity, and only 223,000 tons of primary aluminum capacity.

The prewar uses of aluminum were widely distributed. Except in a few fields like aircraft and cooking utensils, aluminum was not a principal raw material. The biggest consumers were in the automobile industry, aircraft, miscellaneous metal products, electrical cable and other products, cooking utensils, machinery and appliances, and the iron and steel industry (appendix 3). But none of these were large consumers of aluminum in the same way that the automobile and construction industries absorbed steel products. In automobiles weighing 3,000 pounds or more, the average use of aluminum was less than

8 pounds per car. Two of the causes restricting the markets for aluminum have been the high prices in relation to competitive materials, and the hazards to any prospective large consumers of depending upon the single source of supply, the Aluminum Co. of America.

War requirements boosted American primary aluminum production nearly fivefold from 1939 to 1944 and productive capacity about sixfold. Yet, in 1944, aluminum was still a small industry. The primary output of 776,000 short tons compared with 1,200,000 short tons of refined primary copper and nearly 90,000,000 long tons of steel. Employment in the aluminum industry had been about 35,000 in 1939 and was only 150,000 at its peak in 1944 (appendix 4). Jobs are concentrated in fabricating plants, where employment is 5 to 10 times greater than in the mining, alumina, and reduction stages combined. Significant, however, was the fact that possibly 2,000,000 workers during the war learned to handle aluminum and magnesium in aircraft and other war plants. Aluminum is no longer a strange material to many who will be seeking postwar jobs. The end of World War II has erased the need for much of the current employment in the industry. The problem now is whether and how quickly the small prewar peacetime markets can be developed to equal or exceed the wartime demand.

The International Situation

From 1925 through 1944, the United States was the largest producer of primary aluminum, except for one crucial period. During Germany's preparation for war beginning with Hitler in 1933, Germany alternated with this country in leading the world in production, but it assumed a commanding position during 1938-40 (appendix 5). Canada ranked third during most of these 20 years. Japan sharply increased its capacity during 1942-44 while Russia made a moderate effort. Now, at the end of the war, pending determination of the extent of damage to plants of the enemy, the United States stands first with over 40 percent of world capacity. Canada is second with 20 percent controlled directly and a total of 26 percent controlled both directly and indirectly. Germany is third with 10 percent. The remaining capacity is scattered (appendixes 6 and 12).

World capacity in 1944, nearly 2,600,000 metric tons, was about 10 times the world production of 1935. Some of the world capacity, built for war requirements, would be uneconomical if used for open competitive markets. Whether it will survive after the war will depend on governmental policies, principally national defense strategy, subsidies, tariffs, and trade agreements. Japanese and German capacity will also be subject to disposal policy of the United Nations. Internationally, the commercial problem will be the same as in the United States—how fast and to what size will peacetime commercial

markets grow before the economical portion of the war-built capacity is all required and more must be added.

Each of the victorious United Nations will undoubtedly profit from the lesson of air power and the atomic bomb. National defense rests upon air power; air power upon a modern air force supported by effective productive capacity; effective productive capacity upon aircraft and light metals plants ready for rapid production. Speed is the essence of security.

Whatever the future of war, national policy should require that the United States at least be on a par with any other nation in leadership in the air and in the size of the supporting industries. Other countries may be expected to encourage and develop to the maximum their capacity and technology to produce light metals. For this reason, the disposition and future use of the Government-owned aluminum plants is a matter of the highest national concern. It will justify measures to promote a large and healthy American aluminum industry.

Structure of the Industry

The aluminum industry consists of the following stages:

1. Mining the ore—bauxite.
2. Converting the ore into alumina.
3. Reducing alumina into aluminum by the application of large amounts of electric power.
4. Semifabrication of aluminum into various forms for manufacture into final products.
5. Manufacture of semifabricated aluminum into end-products.
6. Recovery of new and old scrap aluminum and conversion into secondary metal for semifabrication and manufacture.

The most economical ore for making aluminum is high-grade bauxite. The ore generally has about 10 to 15 percent free water and may be crushed and dried before shipment in order to reduce transportation costs. The dry ore is composed of 56 to 60 percent aluminum oxide or alumina, not over 7 percent silica, about 30 percent chemically combined water, and small amounts of iron, titanium, and other impurities. Most bauxite production is conducted economically by open-pit mining, only a small portion coming from underground mines. The most favorable prewar mining costs in Europe and the Western Hemisphere were probably between \$2 and \$3.25 per long ton. Transportation costs by water to the United States or by rail within the United States equal or exceed the cost of bauxite. American bauxite reserves are very limited, concentrated in Arkansas, and held largely by Alcoa. Before the war, about 60 percent of Alcoa's bauxite requirements were imported in Alcoa ships from the Alcoa mines in Dutch Guiana. After the war, a larger proportion will necessarily be imported because of the reduction of domestic reserves.

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Prepared by Aluminum and Magnesium Division, War Production Board

The alumina plant requires fuel, soda ash, and lime in the ratio of three-fourths ton of coal or equivalent in other fuel (19 million B. t. u.'s), 122 pounds of soda ash, and 125 pounds of lime for 2 short tons of high-grade bauxite. These quantities produce 1 short ton of alumina (Al_2O_3). The alumina plant therefore is best located at a point where the transportation costs of the raw materials are the lowest, usually closest to the fuel. The Bayer production process is standard and no longer under patent. The fuel and raw materials constitute about three-fourths of the costs of production, and labor about 5 percent. Just before the war, alumina was produced in this country by Alcoa in only one plant at a mill cost of \$28 to \$30 per ton and during the 1930's at an average cost of about \$35 (appendix 7). In Europe the best costs were probably somewhat below \$25 per short ton.

The Bayer process is applied to high-grade bauxite and recovers about 80 to 85 percent of the alumina content. The only significant new commercial development in the production of alumina during the war has been the work of Alcoa on the Combination process, combining the Bayer process with the so-called lime-soda-sinter method. In this new and patented process, lower grade bauxite can be used and 85 to 90 percent of the alumina recovered. The process does not necessarily reduce the costs of producing alumina, although it may have some effect. Its value lies in extending the volume of bauxite reserves of commercial grade, particularly in this country, by expanding our reserves from a 2-year supply of high-grade ore for peak war requirements to a total supply of usable ore that might last 8 to 10 years on a war basis.

During 1942 and 1943, the submarine campaign was extremely effective against bauxite ships in the Caribbean, more than 100 vessels being destroyed in addition to convoying ships. The threat to bauxite imports led to a Government-financed program of 4 semi-commercial plants to produce alumina from domestic clays and other ores. This program has not yet been completed but it is not expected to alter the position of bauxite as the commercial source of alumina.

In the reduction process, which is not patented, the alumina powder is dissolved in a molten bath of cryolite in an electrolytic cell or pot. The passage of electricity through carbon electrodes separates the metal which is poured into the form of pig. The amount of electricity used is very large. The plant at Alcoa, Tenn., requires as much power as might be used for all purposes in 1 year by a city of 1,000,000 population. Consequently, reduction plants are located near sources of low-cost power, usually hydroelectric. In this country prior to the war, most of the power was produced at projects owned by Alcoa. During the war, the economical portion of aluminum

expansion was powered largely by the Federal projects in the Tennessee Valley and Pacific Northwest. However, the national power shortage required the use of uneconomical high-cost power for a number of the Government aluminum plants.

One pound of metal requires about 2 pounds of alumina, 8 to 10 kilowatt-hours of electricity, 0.6 to 0.8 pound of carbon electrodes, and small amounts of cryolite and aluminum fluoride. The principal cost items are power, alumina, and electrodes, accounting for nearly three-fourths of the total cost. Labor represents only 10 to 15 percent of cost. The most economical power for aluminum in this country is produced at Alcoa's own plants for between 1.0 and 1.5 mills per kilowatt-hour of mixed primary and secondary power. The most economical purchased power ranges from 2.0 to 3.3 mills per kilowatt-hour of primary power and is sold from Federal power projects. Estimated postwar costs of power for aluminum plants in this country are given in appendix 8. The mill cost of producing pig aluminum before the war was between 8 and 9 cents per pound (appendix 9), and other costs of general overhead and transportation made the total delivered cost range between 9 and 11 cents.

The pig aluminum used for fabrication is generally 99.7 percent pure or better. Alloyed with various metals—copper, zinc, magnesium, and others—it is semifabricated in a variety of ways. In structural rolling mills it is converted into rods, bars, and special shapes, which are shipped to other plants for production of extrusions, tubing, wire, cable, and forged products. In sheet rolling mills it is converted into plate, sheet, strip, and foil. In casting plants, the metal is molded in a number of ways. Other semifabrication processes produce powder, paste, and rivets. Semifabricating plants are located closer to markets than to reduction plants in order to save on the higher freight rates which apply to semifabricated and fabricated products.

In the field of final fabrication, the aluminum industry fans out into all other industries. In the aluminum industry itself, final fabrication includes a few items such as wire, foil, cable, and kitchen utensils. But most of the aluminum is processed into end uses by other industries—automobiles, aeroplanes, household appliances, etc.

The secondary aluminum field includes the collection of scrap and the melting of it into secondary ingot and alloys, with or without the added "sweetening" of primary aluminum. From products containing aluminum that are junked each year old scrap is obtained. From production processes within the aluminum industry, the excess metal left from castings, or as clippings and in other forms, is generated as new scrap. Old scrap constitutes additional metal during a year,

competing with primary metal. New scrap, originating principally from primary metal, does not provide true competition.

Generally, the older a metal industry, the greater the annual recovery of old scrap and the importance of competition of secondary metal with primary metal. In aluminum, secondary metal has not yet achieved the importance it has in copper and steel. During years of large production in the 1930's, the supply of steel was composed of about two-thirds scrap metal; of the total supply of copper, about one-third or more was secondary metal; and of the total supply of aluminum, a little more than one-fourth was secondary. During the war, secondary aluminum has averaged about one-fourth of the total supply, the actual volume increasing sharply in the form of new scrap recovered from the greatly expanded production of fabricated products, especially for planes. Wartime measures to sort scrap carefully have increased the uses in which it replaces primary metal. Appendix 10 shows production figures for primary and secondary aluminum in recent years.

Organization and Control of the Industry

The American ideal of free competition has been the most noteworthy trait absent from the aluminum industry, both at home and abroad. The world aluminum industry has been stamped by the vertical integration of the most economical producers; large investments in such integration; the existence of monopolies, or only a few companies, or Government ownership in the most important producing countries, and cartel agreements during most of the 50 years of prewar history of the industry. Appendixes 11 and 12 portray the world aluminum industry in 1944 and the control held by the various companies.

Alcoa and its Canadian affiliate, Aluminium Limited (Alted), dominate the world industry, unified in policy through ownership of controlling stock held by the same families or individuals. In 1944 the two companies controlled 64 percent of the world primary aluminum capacity (appendix 12). Shortly after the founding of Alcoa in 1888 as the Pittsburgh Reduction Co., Alcoa became the sole American producer of primary metal and held that position until 1941. On March 12, 1945, in the most recent antitrust case against the company, lasting nearly 8 years, the Circuit Court of Appeals for the Second District sitting as a court of last resort held that the company as of 1940, had a monopoly on the production of ingot in violation of the Sherman Act.

The practices employed by Alcoa are most important for an understanding of the problems of the disposal of Government aluminum plants and facilities in accordance with the objectives of the Surplus

- Property Act of 1944 to "discourage monopolistic practices" and to "strengthen . . . an economy of free enterprise." Any new producer must face conditions in the domestic and world markets controlled now by Alcoa and Altd in the face of a record which the Circuit Court in speaking of the production of ingot, summarized as follows:

Alcoa's size was "magnified" to make it a "monopoly"; indeed, it has never been anything else; and its size, not only offered it an "opportunity for abuse" but it "utilized" its size for abuse as can easily be shown (p. 1216).

Again:

This increase and this continued and undisturbed control did not fall undesigned into "Alcoa's" lap; obviously it could not have done so. It could only have resulted, as it did result, from a persistent determination to maintain the control.

There were at least one or two abortive attempts to enter the industry, but "Alcoa" effectively anticipated and forestalled all competition, and succeeded in holding the field alone (p. 1216).

The extent to which the aluminum industry was concentrated in the hands of Alcoa before the war is shown in the following tabulation. All of the primary aluminum and nearly all of the alumina were produced by Alcoa. The bulk of the principal fabricated products was also made by Alcoa, competitors being very few. Only in the fields of cooking utensils and castings in which and products are directly made, investments are not large, and technical knowledge is not difficult to spread, was a substantial share of production contributed by others. In the secondary metal industry, which provided from old and new scrap some of the metal used in the fields of fabrication shown in this table, there were between 70 and 80 individual producers before the war.

Approximate prewar competition in the aluminum industry in the United States

Product	Number of producers, including Alcoa	Alcoa's percentage of production	
		Percent	Years included
Primary aluminum	1	100	Up to 1939
Alumina (for aluminum) ¹	1	100	Up to 1939
Sheet	7	Over 82	1939
Foil	5 to 10	85-94	1939-1940
Structural shapes (large)	1	100	1939-1940
Extrusions	4	84	1939-1940
Cable	1	100	1939-1940
Cooking utensils	Approx. 30	25	1939-1940
Castings	(7)	13-25	1939-1940

¹ A number of chemical companies produced alumina for chemical use or for conversion into other chemical products. Their total production, however, was probably less than 5 percent of Alcoa's.

² Number of medium and large producers and many small foundries engaged in secondary metal castings.

NOTE.—The foregoing figures are approximations, drawn from the evidence in the case *U. S. v. Alcoa & d.* principally from the conclusions of the District Court for the Southern District of New York, 44 F. Supp. 97, and partly from the contentions of the Government in *Brief for the U. S.* As the District Court did not make a precise finding for each product as to the percentage of production controlled by Alcoa, some of the foregoing figures are estimates, derived from the decision of the Court.

At the end of 1937, Alcoa had total assets of \$237 millions representing 34 subsidiaries wholly or partly owned, besides production facilities in its own name, engaged in the following activities: mining bauxite in Dutch Guiana and the United States; ocean transportation of bauxite and a miscellaneous shipping business; owning power sites and producing and selling electric power for aluminum production and public use; deck terminal functions; railroads serving the bauxite mines and the alumina and aluminum plants; manufacture of alumina; reduction of alumina to aluminum; and fabrication of aluminum. The approximate net investments (original cost after obsolescence and retirements) in the major activities were as follows: ¹

	Millions
Power facilities and sites (7 companies).....	505
Bauxite mining (2 companies).....	9
Ocean transportation (2 companies).....	2
Railroads and terminals (5 companies).....	7
Alumina production (1 company).....	22
Aluminum production (3 companies including 4 reduction plants, 3 carbon plants, 2 towboats, and research laboratories).....	76
Rolling mill and remelting facilities.....	20
Casting plants.....	10
Aluminum cable facilities.....	2
Total.....	343

Just before the war, Alcoa began a program of expansion which added \$252 millions during the 5 years ending in 1944 to net investments in land, water rights, plants, etc. In that period, Alcoa's capacity to produce primary ingot nearly doubled from 445 million pounds to 828 million pounds. Fabricating facilities expanded even more. Information is not available on the current distribution of investment.

In 1940, the Reynolds Metals Co., a large prewar consumer of aluminum principally for the manufacture of foil, entered the war expansion program with financial assistance from the Reconstruction Finance Corporation. Reynolds thus became the first company since 1898 to produce primary metal in competition with Alcoa in the United States. Reynolds' capacity was 162 million pounds of primary metal and a much greater amount of fabricating capacity.

The Government, through the Defense Plant Corporation, carried the bulk of the war expansion program in aluminum, investing \$672,000,000 in 50 wholly owned plants and related facilities and in scrambled facilities in 34 privately owned plants. The Navy Department invested \$2,300,000 in 2 wholly owned aluminum powder plants and in scrambled equipment in three private plants. The Govern-

¹Figures condensed and arranged from U. S. A. Y. Aluminum Co. of America, et al., reply to Interrogatory 2.

ment primary capacity was 1,320 million pounds, matched by corresponding alumina and fabricating capacity. Alcoa built for and leased from the DPC the 2 Bayer alumina plants, all but 1 of the 9 reduction plants, and most of the plant capacity in the fabricating fields.

As shown in the following table the war expansion placed Alcoa in control of more than 90 percent of American alumina and primary metal capacity, and more than 67 percent of the capacity for sheet and plate, extruded shapes, rolled rod and bar, and tubing. In most of the remaining fields, Alcoa was still the largest single producer. If the Government capacity is excluded, then Alcoa's control of private capacity is not materially different (appendix 13a). The Government, of course, owned more than half of the alumina and primary metal capacity, and large proportions of capacity in fields of fabrication. But much of this capacity is either uneconomical or so specialized that it is not the competitive equal of the private capacity. During the war, new producers entered the fields of fabrication, providing the possibility for wider competition in the postwar period.

Competition in the aluminum industry in the United States, 1944

Product	Total capacity (thousands of pounds)	Percent of capacity owned or operated by—			Number of producers
		Alcoa	Reynolds	Others	
Alumina from bauxite.....	4,896,000	93.9	4.1		2
Alumina from other ores.....	180,000			100.0	1
Primary aluminum.....	2,500,000	91.4	8.0	1.7	3
Sheet, strip, and plate.....	1,388,000	88.2	8.4	7.4	7
Rollod rod and bar.....	812,000	90.1	2.5	7.4	3
Foil.....	302,373	28.4	43.6	28.0	6
Tubing.....	79,538	78.1		21.9	3
Forgings.....	944,000	47.6		52.4	8
Castings:					
Sand (excluding cylinder heads).....	379,000	10.4		89.6	120
Permanent mold.....	161,000	10.5	4.0	78.2	73
Die.....	127,944	11.6		88.4	23
Cylinder heads.....	379,000	26.7		73.3	9
Extrusions:					
Rod and bar.....	94,000	10.1		89.9	1
Shapes.....	351,528	69.0	2.7	28.0	7
Tube blooms.....	180,379	74.1	4.6	21.0	7
Wire.....	30,000	90.0	0.8	8.8	3
Cable.....	32,894	60.0		40.0	2
Rivets.....	71,704	36.4		74.6	20
Powder.....	101,004	22.5	10.0	68.4	3
Paste and flake.....	44,000	11.3	12.3	76.4	3

¹ Approximate number reporting monthly shipments of 3,000 pounds or over to the War Production Board.

Source: Condensed from appendices 12a-12q.

Current Position of Reynolds and Alcoa

A plant disposal program under the act must necessarily be framed with due consideration to the present situation of Reynolds and Alcoa, and to the effects of that situation upon any others wishing to enter the industry by taking over Government plants.

The Reynolds Metals Co. has some 20 affiliated and subsidiary corporations producing a variety of industrial products. The prewar list included thermostats and other control devices; heating units and sanitary enameled ware for housing; metal foils for protective packaging, especially of food products; and aluminum insulating materials, foil, sheet, powders, and pastes. The products added during the war included bauxite, alumina, pig aluminum, and semifabricated aluminum products including rod, bar, shapes, extrusions, forgings, and castings. The company borrowed from the Reconstruction Finance Corporation over \$45 millions for most of its aluminum expansion by mortgaging all of its plants. In addition, it managed aluminum properties owned by the Defense Plant Corporation valued at original cost of \$30 millions. Its total assets including Reynolds Alloys Co., increased from nearly \$24 millions at the end of 1939 to nearly \$100 millions at the end of 1944. Its earned surplus expanded from \$4 millions to over \$13 millions.

The most important problem before Reynolds is to convert its high-cost operations in alumina and primary metal into effective competition with Alcoa. The war with Japan upset Reynolds' plans to import at a low price high-grade bauxite from the Dutch East Indies and forced the company to buy or mine lower grades of ore in Alabama, Georgia, and Arkansas and to buy at war prices some high-grade ore from South America and from an independent domestic producer. High-grade bauxite in this country was held by others, most of the reserves reportedly held by Alcoa. Reynolds' wartime costs of bauxite were thus higher than Alcoa's and the average available grade was lower than the prewar Alcoa average. Reynolds has lost money from its primary aluminum operations but recovered the losses from profits on the rest of its business. The company has recently secured extensive deposits of better grade bauxite in Haiti and Jamaica and is engaged in developmental work promising new economies in converting bauxite into metal. It has an advantage of the only integrated plants in the country located at one place, Listerhill, Ala., producing alumina, pig aluminum, and rolling mill products. But at this location it has the disadvantage of dependency upon purchased power at rates considerably higher than the average cost of Alcoa's energy, both generated and purchased. In the Pacific Northwest, it has a reduction plant operating with low-cost power but dependent upon purchased alumina shipped across the country. Continued production at this plant would require additional alumina capacity. Its total fabricating capacity is considerably in excess of its capacity for primary metal, but this should offer no problem in view of the abundant postwar supplies of secondary metal that can be purchased from war surpluses. In summary, the Reynolds problems

appear to be principally (1) obtaining and converting bauxite at costs comparable to Alcoa's; (2) adding additional capacity to process bauxite for its reduction plant in the Pacific Northwest, or else, cutting back primary production; and (3) reducing its general production costs in order to offset its relatively high power costs in Alabama.

Alcoa, in comparison with its prewar situation, is much larger, just as well diversified, and financially much stronger. Its total assets have expanded from \$251 millions at the end of 1939 to \$474 millions at the end of 1944. Earned surplus increased from \$51 millions to \$163 millions. At the peak of DPC plant operations Alcoa leased Government plants and scrambled facilities that cost \$500 millions and it still has under lease a large portion of the investment. The only notable disadvantage produced by the war has apparently been the marked reduction of the high-grade bauxite reserves in Arkansas and the threatened obsolescence within a few years of the East St. Louis alumina plant which depends on Arkansas ore. The Mobile alumina plant, however, using imported high-grade bauxite, promises to produce at less than the prewar East St. Louis costs.

Alcoa and Reynolds jointly have one advantage that must be recognized by any would-be competitor and by the plant disposal agency for the Government. Both have amortized much of their wartime investment within the past 5 years under the privilege of depreciating at the rate of 20 percent per year. Reynolds has depreciated and amortized \$23 millions out of a \$43 millions net increase in property, plant, and equipment since 1939. Alcoa has depreciated and amortized \$152 millions out of an increase of \$252 millions in similar property.

Government regulations permit the final amortization of any remaining balance of war investment upon obtaining a certificate that the property is no longer necessary for war production. Consequently, any plant and equipment built for war purposes and used by Alcoa and Reynolds after the war will carry no depreciation charges into production costs.

There is another element of actual or potential competition, involving Alcoa, that must be faced by new producers of aluminum. Altd, controlling the Aluminum Co. of Canada, should be able to produce aluminum for 6 cents a pound or less at the mill (appendix 14). In the United States market it would therefore be at least a marginal competitor for independent United States producers producing at 8 cents or more, in spite of the 3-cent tariff (appendix 15a, b, c). It would be a very serious competitor if its sales policy were dictated by Alcoa and sales were deliberately pushed as a device to reduce Alcoa's share in the United States market in relation to a court antitrust decision. In foreign markets, whatever its future

relationship to Alcoa, Alted will always be in a very strong and possibly a dominating, competitive position.

The Aluminum Co. of Canada has experienced a war expansion in primary aluminum far greater than Alcoa's, making the Canadian company the world's largest producer. From a production of 165 million pounds in 1939, a rate near capacity, the Company expanded until a capacity was attained of 1 billion pounds in 1944. Total assets of the holding company, Alted, rose from \$98 millions at the end of 1939 to \$299 millions at the end of 1944. In the same period, earned surplus increased from \$28 millions to \$54 millions. Alted has numerous subsidiaries and affiliates throughout the world. These operate or hold bauxite mines or deposits in British Guiana and Jamaica; chartered vessels; railroad and terminal facilities; power projects; and alumina, reduction, and fabricating plants in Canada, Great Britain, Germany, Austria, Italy, Switzerland, Sweden, Norway, Spain, India, and China. Alted is now planning to expand in Mexico, Aden, and India. Because its fabricating plants in Canada can handle only about 6 percent of its primary metal capacity, Alted has every incentive to increase its fabricating facilities or markets for ingot in all foreign countries.

Its advantage of the lowest cost primary metal arises largely from the low-cost electric power from the remarkable Shipshaw power project built during the war on the Saguenay River in the Province of Quebec. This was built as part of the expansion program of the Aluminum Co. of Canada and was financed by the governments of the United States, Great Britain, and Australia, and by generous provisions for accelerated amortization from the Canadian Government (appendix 16). All of this assistance including that by the Reconstruction Finance Corporation was the equivalent of a drastic subsidy on postwar production of the Canadian company. It raises the question of whether the United States should adopt counter-balancing policies to offset the subsidized advantages of Canadian aluminum if those measures are necessary for the Government plant disposal program.

B: THE ECONOMIC PROBLEMS

Summary

By law, the Government plants should be disposed of in such a way as to foster competition in the aluminum industry. More competition would probably expand the use of aluminum and thus result in greater employment and production in the industry. It would also strengthen the national defense. But a series of problems must be individually faced by the Surplus Property Board in its effort to carry out the law. These problems are principally the following: (1) The raw material,

bauxite, is not readily available to new producers; (2) only some of the Government aluminum plants are economical for competitive operation, and plant adjustments may be necessary; (3) the costs of power from Federal projects are subject to inflexible rate policies; (4) the total primary aluminum capacity in the country that is economical exceeds the requirements of immediate postwar markets; and (5) the volume of war surplus secondary aluminum is so great that the manner in which it is disposed will determine how much primary metal will be needed for at least 5 postwar years.

In view of these problems it will take time for new operators to obtain bauxite, to develop markets, and to establish themselves firmly in the industry. During this time, the Government can dispose of certain key plants under liberal leasing arrangements with purchase options and also provide other assistance to facilitate operations. Some fabricating plants and scrambled facilities can probably be sold now but other fabricating capacity will only be disposable later.

The Surplus Property Act and Competition

The Board believes that Congress intended in disposing of surplus property that the Board should be guided by two fundamental objectives stated in the Surplus Property Act:

1. To assure the most effective use of such property for war purposes and common defense, and
2. To encourage and foster postwar employment opportunities.

At the same time it is evident that the Congress believed that these two objectives could best be obtained by disposal policies that promote competition. This view of national policy is reinforced by the recent court decision in the antitrust case brought against Alcoa.

Section 2 of the Act recites a number of objectives among which the following pertain to monopoly and competition:

- (b) to give maximum aid in the reestablishment of a peacetime economy of free independent private enterprise, the development of the maximum of independent operators in trade, industry, and agriculture . . .
- (d) to discourage monopolistic practices and to strengthen and preserve the competitive position of small business concerns in an economy of free enterprise;
- (e) to effect broad and equitable distribution of surplus property;
- (f) to foster the development of new independent enterprise;
- (g) to dispose of surplus property as promptly as feasible without fostering monopoly or restraint of trade . . .

In order to protect these antimonopoly features of the act, section 20 requires that the Attorney General review proposals to dispose of any property costing \$1,000,000 or more and that he render an opinion to the Surplus Property Board whether the proposed disposition will violate the antitrust laws. A further indication of the use

mistakable intent of Congress was written into Section 205 of the War Mobilization and Reconversion Act of 1944 which was a companion law to the Surplus Property Act. Section 205 directs the Attorney General to make surveys and recommendations to Congress on "factors which may tend to eliminate competition, create or strengthen monopolies, injure small business or otherwise promote undue concentration of economic power in the course of war mobilization during the period of transition from war to peace and thereafter."

For the past 8 years, the Department of Justice has conducted an antitrust case against Alcoa. On March 12, 1945, the United States Circuit Court (Second Circuit), acting as the court of final appeal in place of the Supreme Court, found that Alcoa had been a monopoly in primary aluminum as of 1940 and that this monopoly had been obtained in violation of the Sherman Act. Following this decision, the Attorney General advised the Surplus Property Board on May 21, 1945, that disposal of any plants or equipment to the Aluminum Co. of America should not be made until a plan had been worked out under Section 19 of the Surplus Property Act.

On September 6, 1945, the Attorney General advised the Board further:

It is my judgment that as a general rule, the disposal of any government-owned aluminum plant to Alcoa would be violative of the antitrust laws, unless such disposal were accompanied by suitable divestiture of properties now owned by Alcoa to the extent necessary to create competition. As you know, it is not the practice of the Department to give general opinions on disposal matters absent a particular disposal program of specified plants. The position of Alcoa, however, is unique in that court action as to divestiture has been expressly deferred in order that the Court may determine what effect Government disposals have upon competition in this industry. Therefore, any government disposal which does not increase competitive conditions will make more necessary the ultimate dissolution or rearrangement of Alcoa.

The Antitrust Decision and Competition

The opinion of the Circuit Court of Appeals pointed out that the question of the future dissolution or reorganization of Alcoa would be affected by the success or failure of the Surplus Property Board in promoting competition through the disposal of Government plants.

The Court stated that with respect to the plants, the Government may be able to transfer all of them to persons who can effectively compete with Alcoa; it may be able to transfer some; conceivably, it may be unable to dispose of any. The measure of its success will be at least one condition upon the propriety of dissolution * * *

The Court further cited the objectives of the Surplus Property Act and concluded that if the Board or the disposal agency forms an industry-wide plan of disposal,

It will have been an attempt to realize the same "objectives" for which the court itself must strive; and the court may well feel that it should accord to the "agency's" plan that presumptive validity which courts are properly coming more and more to recognize in the decisions of specialized tribunals.

But the Court was careful to add,

Nothing which we now say ought in any measure to limit the discretion of the "agency" to proceed in this way.

It is important to note two points in this connection:

1. In fact, it may not be possible for the Surplus Property Board to dispose of the plants to competitors of Alcoa unless and until the Court does require some degree of dissolution or reorganization of the property Alcoa now owns.

2. Even if the Board is successful in selling some of the plants to competitors of Alcoa, this fact by itself may not satisfy the requirements of the Sherman law. It is not the province of the Board to work out a plan for the reorganization of the properties presently owned by Alcoa or to express any views on the question whether, after the completion of the Board's disposal program, Alcoa's operations will be lawful under the Sherman Act. That is a question which must be determined for the executive Branch of the Government, by the Attorney General and a question that will presumably be decided ultimately by the courts.

Competition Will Foster Employment and the National Defense

The size of the aluminum industry, the number of producing plants, as well as the volume of skilled employment in the industry are inseparable from the ability of the nation to defend itself in time of emergency. Security depends upon two factors: (1) the ability to convert rapidly to war production on a large scale and (2) the protection of key productive facilities against enemy action. Before the war, destruction of the only alumina plant in the country would have stopped the aluminum industry and the airplane program for about 18 months. Interference with production at any of the four reduction plants would have been a serious blow. Today, the privately owned plants add little more security in numbers—three alumina plants and seven reduction plants. The advent of new producers in the industry through Government plant disposal would increase national security by placing other plants into production.

In stating this conclusion the Board does not intend to minimize in any way the very important contribution that Alcoa has made to the war production program.

Finally, the Board believes that competition in the production of aluminum will broaden the peacetime market.

Testimony in support of these conclusions was given earlier this year at the hearings on light metals before the Senate Small Business Committee. Witnesses from industry agreed that aluminum has one of the brightest opportunities in the history of industrial materials. Wherever things are moved at a cost of human labor or power, lighter loads mean economies. Lighter ships, trains, automobiles, and trucks mean heavier payloads, and savings per unit of payload in fuel, repairs, operation, and maintenance. New uses of light metals in tools, machinery, and home appliances mean savings in human labor. Aluminum foil or sheet serving as insulation means savings in food preserved from waste and economies in house heating and air cooling. Aluminum thus has the potentiality of becoming a highly important material for a nation at peace. It can become the means of producing large national economies in labor, fuels, and other materials.

In 1944, the McGraw-Hill Publishing Co. surveyed 551 industrial plants and found that nearly half expected to increase their uses of aluminum. Out of twelve industrial materials covered in the McGraw-Hill Materials Survey, aluminum ranked second behind plastics in the number of additional applications that will be made of the material. But how fast and how far the expansion of uses of aluminum can go will depend largely upon further reduction in aluminum prices in relation to the prices of competing materials, and on competition within the aluminum industry.

Witnesses before the Senate Small Business Committee referred to the curtailment of aluminum consumption by the automobile industry 20 and 30 years ago because of the sharp price increases and unwillingness to depend upon the one source of supply. Prior to 1915, General Motors averaged 75 pounds of aluminum per car. Ford abandoned the use of sheet aluminum on the body of his car in 1924. By 1939, the average use of aluminum was less than 8 pounds per automobile. Had consumption remained around the 75-pound level, the automobile industry alone could have taken in 1939 the entire output of the aluminum industry. A summary of the experiences of the automobile industry with aluminum, as based on evidence in the Alcoa antitrust case, is given in Appendix 17.

The Senate Small Business Committee found that industrial consumers of aluminum planned to use greater amounts of the metal if additional sources of supply were available. In reply to a questionnaire asking, "Will you be encouraged to go forward with plans for production of aluminum products in peacetime if you are assured of alternative sources of supply for raw materials?", 71 firms answered "yes" and 41 replied that they were not affected by the question. Comments from firms answering this question also showed that a foremost consideration was the likelihood that more competition

would mean lower prices. Another question was asked by the Committee: "To what extent will your decision be influenced by the price of aluminum and magnesium raw materials which you employ?", and 81 firms stated that they planned for increased production if prices were lower while 36 stated that price would not influence their decisions.

Businessmen naturally are reluctant to go publicly on record to the effect that they would prefer to see more competition with their largest source of supply on which they are now dependent, but one witness before the Committee undoubtedly expressed the views of many others: "Insofar as the supply of raw material is concerned, unless there were at least a half-dozen basic material-producing independent facilities available it would be hazardous for the small fabricator to venture too far out in his business enterprise. At least a half-dozen basic sources of supply should be a must for a sound economy in both the aluminum and magnesium fields. No one or two companies should be allowed to control the destinies of thousands of small companies * * * While it is true that a considerable amount of competition will develop from the secondary aluminum market, still it would be only a matter of time till that was consumed and the primary field must be depended upon for our major source of supply."

The Kaiser Co., Inc., has taken a similar position. It is interested in acquiring the Government-owned aluminum rolling mill and reduction plant located at Spokane. But Alcoa has stated that it wishes to acquire the Spokane reduction plant without the rolling mill. If Alcoa were to obtain the reduction plant, the Kaiser Co. would not want to take the rolling mill, according to recent testimony before the Senate Committee Investigating the National Defense Program. Chad F. Calhoun, vice president of Kaiser Co., Inc., explained their position as follows:

Mr. CALHOUN. * * * what we would prefer in any industry of this type would be to be assured our basic raw material.

SENATOR MITCHELL. You don't think you would be assured if some other company were operating the reduction plant.

Mr. CALHOUN. We would hate to put ourselves in the position of being at the mercy of only two producers.

It is most important to note that the advent of Reynolds does not necessarily mean immediate competition with Alcoa in the same markets or much metal to new users. Mr. M. M. Caskie, vice president of the Reynolds Metals Co., also testified recently before the Senate Committee Investigating the national defense program as follows:

* * * Testimony of Arnold Troy, Eastern Metal Products Co., *Hearings on Problems of American Small Business*, United States Senate, 79th Cong., 1st Sess., part 46, p. 6206.

* Transcript of testimony at Spokane, Wash., August 22, 1945, p. 4195.

Although Reynolds Metals Company has its own wholly owned facilities capable of producing half as much as the maximum annual prewar production of the former sole producer, its production is almost entirely required for the types of business in which Reynolds was engaged prior to the war. That amount of production is not sufficient to guarantee the big prospective users of aluminum in the transportation and other industries that they will have an adequate supply from more than one source.⁴

Accordingly from the viewpoint of other industrial consumers of aluminum the presence of both Reynolds and Alcoa may not immediately mean competitive sources of supply to any large extent unless additional sources are developed through Government-plant-disposal policy.

The Problem of Bauxite

A new competitor in the aluminum industry can be really independent only if he has his own reserves of bauxite in sufficient quantity and proper quality, economically accessible to the alumina plant at delivered costs comparable to Alcoa's costs. A permanent supply of high-grade ore can only be obtained abroad. But for some years an arrangement is possible that can give a new producer a start in this country; i. e., using medium-grade ore in Arkansas processed at the Government-owned alumina plant at Hurricane Creek. Most of the suitable ore for aluminum is found in Arkansas and is controlled by Alcoa. In the antitrust case, the District Court found that the Government did not prove that Alcoa had a monopoly of bauxite in the United States commercially suitable for aluminum. The Circuit Court did not overrule this finding. Regardless of this conclusion, the Reynolds Metals Co., entering the primary aluminum business in 1941, was unable to find sufficient supplies in this country of proper grades of bauxite and was forced to adopt temporary expedients to obtain imports and to handle noncommercial grades of ore. Reynolds has since found ore in Haiti and Jamaica and is continuing the search for additional foreign reserves.

The interim solution for a new producer is to obtain alumina by operating the Hurricane Creek alumina plant, or buying alumina from another operator at that plant. The ore supply would consist of about 2,800,000 tons of Government-owned, medium-grade ore now held in stockpile for use at Hurricane Creek and a supplemental supply of similar ore from independent mining producers in Arkansas. The Independent Bauxite Producers of Arkansas, Inc., have advised the Metals Reserve Company that they can provide at least 5,000,000 tons of such ore to the plant. The total of 7,800,000 tons would be the equivalent of about 3,000,000 tons of recoverable alumina, sufficient for 8 years of plant operation at 50 percent of capacity, or

⁴ Transcript of testimony at Spokane, Wash., August 21, 1944, p. 4119.

16 years at 25 percent of capacity. The plant is so large that production at 25 percent would undoubtedly be adequate for one or more new producers for some time, providing them with 400,000,000 pounds of alumina annually, sufficient for 200,000,000 pounds of metal. Whether the plant can produce competitively at that low rate of operation is now being investigated by the Reconstruction Finance Corporation through an engineering survey at the request of the Surplus Property Board.

Recently operating at two-thirds of capacity, Hurricane Creek has produced at a mill cost of around \$28 per ton, based on the current price scale for bauxite established by Metals Reserve. The plant has the advantage of being in the bauxite fields, thereby avoiding railroad or ocean transportation costs.

The Metals Reserve stockpile will be withheld from declaration as surplus and will be offered to the Hurricane Creek operator after the war to whatever extent is necessary to supplement the supply obtainable from Arkansas mining companies.

Alumina produced at Hurricane Creek would be the most economical way of supplying the nearby reduction plant at Jones Mills, Ark. It could also be shipped to other reduction plants, including the economical plants owned by the Government in the Pacific Northwest. But since the freight rate to the Northwest is \$8 per short ton, ultimately the Northwest plants may be more economically supplied from alumina capacity built adjacent to them, using imported high-grade ore. Such ore would be accessible to new producers from many parts of the world. A statement of estimated bauxite reserves by countries is given in appendix 18. Additional discoveries are likely in some of those countries as well as new discoveries in other countries.

Arrangements to obtain foreign ore will take time and will probably require some mining exploration and considerable negotiation with foreign companies or governments.

The Surplus Property Board will assist any prospective new aluminum producer through joint discussions with other Federal agencies on various means of securing access to foreign bauxite, including arrangements with foreign governments.

The Problem of What Plants Can Compete

All of the Government alumina and reduction plants are modern. Because of material shortages, some fabricating plants, however, were built by conversion of old plants.

Disposal of these plants is complicated because of (1) disadvantageous locations; (2) capacities far in excess of immediate market needs; and (3) need for some changes in equipment. The situation varies with each plant.

Alumina plants.—The Hurricane Creek (Ark.) plant has no immediate problem of location but has the serious problem of large capacity. This plant was originally designed for a capacity of 400 million pounds but was expanded nearly four times to its present capacity of 1,555 million pounds. On the basis of two pounds of alumina for one pound of metal, the plant could supply over twice the prewar annual requirements for aluminum (1939). It is divisible into four units, and an engineering study is being made by the RFC to determine the possibilities of economical production at various fractions of capacity. The Surplus Property Board will recommend any additional investment reasonable and necessary to alter the plant to permit economical operation, in accordance with the findings of the RFC investigation.

The Baton Rouge plant has a problem of both location and capacity. Its capacity of 1 billion pounds will not be needed for some time, if at all.

The plant was located where it could obtain foreign ore delivered by water and where it could supply from a central point any reduction plants in the country. It has no value to Alcoa at this location because of proximity to the large plant owned by Alcoa at Mobile.

Because it cannot now be readily supplied with foreign ore upon terms competitive with Alcoa, it cannot now compete with Hurricane Creek. It may have value if disassembled and one or more of its three units moved to an economical reduction plant. One candidate for operation of a Northwest reduction plant has indicated interest in moving part of the Baton Rouge plant. Alcoa also has indicated the same interest in connection with its plans to build an alumina plant near its reduction plant at Vancouver, Wash. Either or both of these disposals would be preferable to having the plant stand idle, unless prospects should improve for operation at the present site. Partial disposal to Alcoa would not contravene the Surplus Property Act because it would not handicap any new competition nor would it give Alcoa an advantage it does not already possess.

Reduction plants.—The nine Government-owned reduction plants have the following record of representative wartime production costs at the mill and estimated possible postwar costs per pound of metal:

Plant	Representative war-time costs (in cents)		Estimated possible post-war costs (in cents)	
	Total	Less depreciation and transportation of metal	Total	Less depreciation
Spokane, Wash.	11.350	10.690	8.8-9.3	8.3-8.8
Troutdale, Ore.	11.897	10.708	8.3-9.3	7.8-8.3
Jones Mills, Ark.	13.085	11.904	8.3 or 9.7	7.5 or 8.3
Los Angeles, Calif.	13.863	13.303	10.3-10.8	9.4-10.3
Riverbank, Calif.	14.692	14.180	11.4-11.9	10.5-11.4
Tacoma, Wash.	14.379	14.379	10.0-10.4	9.3-9.6
Maspeth, N. Y.	15.945	15.228	13.7	13.0
Massena, N. Y.	16.194	15.388	8.3-9.3	7.5-8.3
Burlington, N. J.	16.792	15.034	14.0	13.7

¹ Exclusive of transportation of metal.

² At 50 percent of capacity, 8.3 cents; at 100 percent of capacity, 9.7 cents.

The derivation of the costs is explained in appendix 15c. They show that during the war, with pig aluminum selling at 14 cents per pound, delivered, the representative costs of delivered metal were sufficiently low for only four plants. During the postwar period, all of the plants could possibly produce at or below 14 cents per pound. But allowing up to 2 cents per pound for general overhead costs of the entire producing organization and for transportation of metal, and allowing for the possibility of a decline in the price of pig to about 12 cents, it would be necessary for a plant to be able to produce at around 8 cents to 9 cents per pound, the same as Alcoa. Only four plants at present appear to have that prospect. Three of the nine plants were located in areas of high-priced power because of the national power shortage. There is thus no competitive survival prospect, at present, for the plants near Brooklyn (Maspeth), Burlington, and Riverbank. These plants can either be held in stand-by as a national defense measure, disposed of for other uses, or dismantled. The plant at Los Angeles is in a similar situation with respect to long-term supplies of power, although there is some prospect of a temporary rate concession. This alone would not be sufficient to justify a permanent plan of operation by any operator.

The plant at Massena is adjacent to Alcoa's own and much older plant, originally built around 1906, and is on an Alcoa-owned railroad. It has no immediate source of low-cost power but could be supplied ultimately with low-cost Canadian imported power or by the St. Lawrence project. For the present, it is attractive to Alcoa for displacement of the older capacity, employing Alcoa's present power supply. Such disposal, however, would confer a further cost advantage to Alcoa over any competitor, and for the present would not be consistent with a policy to foster competition. Since its capacity is not needed to meet Alcoa markets, it should either be left in stand-by condition or leased, if Alcoa will take it, on terms that give the Govern-

ment as rent most of the economies to Alcoa in production costs. A temporary lease of this nature was made with Alcoa during the part of 1944. The plant should be retained by the Government for ultimate disposal after a power supply becomes available and markets expand.

The plant at Jones Mills is a low-cost, competitive producer. It was originally designed to have its own power facilities. A steam plant was partly completed but construction suspended due to shortages of critical materials. Half of the plant has been supplied with its own low-cost energy from diesel engines and the other half with expensive purchased power. It is possible to complete the steam installation for the second half and produce power at close to a competitive cost. A number of candidates wish to secure this plant in conjunction with a supply of alumina from Hurricane Creek. It can therefore be disposed of now for competitive operation at half of capacity. Should the other half be needed, the steam plant can be completed. There is a possibility of having the steam plant completed in advance for use by the Southwestern Power Administration of the Department of Interior until the power is needed for aluminum. The Surplus Property Board is considering this possibility in connection with a proposal to move a Government-owned steam generating unit from Lake Charles, La.

In the Pacific Northwest, the Troutdale and Spokane plants are low-cost producers. The Tacoma plant has been a high-cost producer but has prospects of cost reduction. The Surplus Property Board has requested the RFC to conduct an engineering study of this plant. A number of candidates have expressed interest in all of these plants. They rank high in possibilities of disposal, primarily because of the assurance of continued and increasing supplies of low-cost power from Federal power projects on the Columbia River.

All of the Alcoa leased reduction plants have large capacities in comparison both with prewar capacities of Alcoa's own plants and with the immediate postwar marketing opportunities for any new operators. In 1937, Alcoa's largest plant was at Massena, with an annual capacity of 107 million pounds. The other plants were Alcoa, Tenn., 93 million pounds; Badin, N. C., 55 million pounds; and Niagara Falls, N. Y., 38 million pounds. The performance capacities of the best Government plants are: Jones Mills, 152 million pounds; Troutdale, 141 million; and Spokane, 210 million. The Tacoma plant built and managed by the Olin Corp. is the only small plant owned by the Government. The capacity is 41 million pounds. The Surplus Property Board has requested the RFC to make engineering studies of the effects of production at low levels upon costs in order to determine what may be necessary in order to place some of these plants in better competitive positions.

Some internal changes may be required, particularly the replacement of electrical bus bars owned by the Treasury Department. These are made of silver and were installed temporarily because of the copper shortage. Another problem will be the construction of a dock and other facilities for water transportation at the Troutdale plant. The Surplus Property Board will recommend to the RFC that it incur expenditures of this type so long as they appear to be recoverable under the terms of lease or sale.

Fabricating plants.—The 21 fabricating plants that cost over \$1 million each were more diversified in size than the reduction plants. (See table, pp. 10 and 12.) However, 9 of these plants, containing most of the total capacity on a poundage basis, were also built and operated by Alcoa and are very large in comparison with postwar market requirements. War needs for sheet, rod and bar, forgings, cast cylinder heads, and extrusions were so great that large capacities were justifiable in the interests of expediency. At the same time, they created a postwar disposal problem.

Each plant is largely specialized. The Spokane and Chicago rolling mills produce principally airplane sheet, but are convertible to roll magnesium, steel, and other metals. The capacity of each mill, 288 million pounds, is almost enough to have rolled the entire aluminum ingot output of the industry in 1939. The rolled rod and bar plant at Newark, Ohio, is even larger in capacity. Other fabricating plants are smaller in capacity but equally specialized. An operator ordinarily would want to acquire a large fabricating plant only if he has his own reduction plant, and that would be practical only if he also acquired alumina capacity and bauxite reserves. Therefore, the disposal of the largest fabricating plants is tied largely to the other basic plants. The smaller fabricating plants (valued over \$5 million each) produce cast cylinder heads, forgings, and extrusions. The cast cylinder head plants were used for airplane production and may be convertible for other postwar use. The other plants may be usable, particularly if diversified to include other fabricating equipment.

Although much fabricating capacity was built in the Northeast, the largest market area in the country, some other plant locations were not advantageous. The Phoenix extrusion plant was placed 424 railroad miles from its nearest market at Los Angeles. The Spokane rolling mill was originally planned for Troutdale, Oregon, close to tidewater and the Troutdale reduction plant. The site was moved 367 railroad miles to Spokane. There a disadvantage resulted because an extra transportation cost was required to reach tidewater.

Factors shaping plant locations and capacities.—The individual companies who built and operated the various plants played important roles in determining locations and capacities. War conditions were

underlying influences, including power and labor shortages, transportation bottlenecks, and deficiencies of critical materials for construction. Responsibility for approving locations and capacities lay with the Defense Plant Corporation and the War Production Board or other sponsoring war agencies, particularly the War Department. In hearings before the Senate Small Business Committee, the confusion arising under this situation was pointed out along with its effects upon postwar competition.⁵ Arthur V. Davis, chairman of Alcoa, was quoted as writing:

It was understood all along and agreed that Defense Plant Corporation would have the final say as to the location and cost of the various sites, but that Alcoa would do the scouting to select one or more sites for a plant as would, in the opinion of Alcoa, seem to be desirable and worth presenting for decision to Defense Plant Corporation.

On the other hand, the Federal Loan Administrator, Jesse Jones, in whose agency the Defense Plant Corporation was located, was quoted:

We are merely a service agency of the Office of Production Management. The War Department requests us to make a contract with Alcoa for this amount of aluminum and they locate the plant. We have nothing to do with such location.

Under such conditions of divided responsibility and war necessities, a number of decisions were made that today handicap plant disposal. Large capacities were accepted because Alcoa said it did not have the supervisory personnel for direction of too many small plants, and because economies could be made in investment and operating costs. The Spokane rolling mill, originally planned for location on tidewater, was moved inland. The capacity, originally planned for 60 million pounds, was combined at the suggestion of Alcoa with that of a plant planned for Los Angeles, although the War Department opposed such consolidation on security grounds. The capacity was then doubled again. The Hurricane Creek alumina plant was placed alongside the Rock Island railroad and the Alcoa subsidiary, the Bauxite and Northern railroad, but was fed with a spur track only from the Alcoa railroad. The same situation occurred at Massena where the reduction plant was placed on an Alcoa owned railroad. Some of the plant locations became involved in controversies over the issue whether postwar survival was being handicapped or aided. The Jones Mills-Camden controversy arose over the location of Camden on a river providing barge navigation whereas Jones Mills was not accessible to water transportation. The Troutdale-Cascade Locks controversy involved the issue of which site was more favorable to water transportation, housing, labor supply, and plant expansion. In these cases, the Alcoa preference was accepted.

⁵ Senate Hearings, Problems of American Small Business, 76th Cong., 1st Sess., part 51, p. 6410.

The impact of these factors upon disposability will vary from plant to plant. The Surplus Property Board is establishing the following policies to deal with this problem:

1. Engineering investigations are to be made by the RFC to determine what changes, including diversification of equipment, are needed in plants in order to improve disposability and to recover the largest amount of the Government's investment. The RFC could finance these changes provided the costs appear to be recoverable.
2. Valuations of plants for sale and rental terms for lease will be adjusted by the RFC to reflect earning value based on actual or prospective ability of the plant to compete with Alcoa and Altd in shipping products to common markets.
3. Equipment will be removed to better locations at Government expense, provided costs appear to be recoverable.

Inflexible Power Rates

In the Pacific Northwest and Tennessee Valley, Federal power is sold to aluminum plants under inflexible power contracts that result at times in much higher costs than Alcoa enjoys from its own power plants. This leads to a marked disadvantage for Reynolds because it buys all of its power whereas Alcoa generates much of its own supply.

It makes more difficult the disposal of the Government plants in the Northwest, and it places all American producers at a disadvantage in competing with Canadian aluminum produced under subsidized power costs. The Tennessee Valley Authority and the Bonneville Power Administration sell power under long-term contracts requiring payment for a fixed amount of power even though less energy is needed at times because of changes in the demand for aluminum. Under conditions of full use of the contract demand, Federal power is low cost; but during periods of business recession, the charges for power not taken sharply increase the costs of aluminum. The power rates and contracts have been established under various laws of Congress affecting the TVA, the Bonneville project, and reclamation projects.

It is, therefore, desirable that those who take over Government plants be in a position to negotiate more flexible power contracts. If the existing laws governing the rates on Federal power prevent the negotiation of power contracts of this kind, it is suggested that Congress may wish to consider, in the interest of national security, a modification of those laws so far as they relate to the use of power for the production of strategic and critical products essential to the national defense.

Primary Capacity Exceeds Immediate Markets

The maximum economical primary aluminum capacity of the country appears to be 1,502,000,000 pounds, distributed as follows:

Alcoa.....	828, 000, 000
Reynolds.....	162, 000, 000
Government.....	512, 000, 000
<hr/>	
Jones Mills.....	152, 000, 000
Troutdale.....	141, 000, 000
Spokane.....	219, 000, 000

In addition, 148 million pounds of Government capacity at Massena and Tacoma might become economical under conditions already mentioned.

Prewar markets in 1939 were 327 million pounds, about one-fifth of the total present economical capacity. Immediate postwar markets during the reconversion period are unknown but certainly will be only a fraction of primary capacity, and that fraction will be shared with secondary metal obtained from the large supplies of war surpluses. Hearings this year before the Senate Small Business Committee disclosed great uncertainty as to the speed of expansion of aluminum markets, particularly for new possible users of the metal on a large scale, such as the automobile and railroad equipment industries. The most optimistic estimates appeared in a survey made at the University of Washington with the cooperation of the Department of Commerce. This study estimated that five years after the war under conditions of full employment and high national income, annual domestic consumption of aluminum, including secondary metal, would total 1.4 billion pounds at 15 cents per pound for primary, and 1.9 billion pounds at 10 cents.* Since it is unlikely that primary metal can go below 12 cents per pound, although secondary ingot could sell at 6 cents to 8 cents, these estimates might be adjusted to provide for 1.6 billion pounds of primary and secondary metal if primary sells at 12 cents. The supplies of secondary, discussed below, could meet nearly one-third of such a demand for 5 years. Therefore, even under these optimistic estimates, it may take 5 years after the war before this country will require anything like 1 billion pounds of its primary metal capacity.

But it would be unwise to rely upon such analysis as a guide to disposal policy. The foregoing estimate deals only with domestic markets. Foreign markets, although they may be dominated by Alcoa, can be opened to American competitors of Alcoa through international trade agreements yet to be made and through the reconstruction programs of some members of the United Nations,

* Fuchs, Gregory, *Mass, Aluminum*, p. 22.

particularly China and Russia. Furthermore, domestic markets will undoubtedly be greater under conditions of competition than under prewar conditions of monopoly.

Any companies, taking over a Government reduction plant, would also benefit from the intentions of industrial users of aluminum to diversify their orders so as to reduce their dependence upon one source of supply.

The Army and Navy Munitions Board has recommended to Congress the establishment of a large stockpile of aluminum and bauxite. New producers would also be helped if they contributed to the stockpile.

There is, therefore, reasonable ground for expecting that within the next year or two, new producers in primary aluminum could take over and operate, at least at a minimum rate of capacity, one or more Government reduction plants. It is important that they do this early in order to share in the first growth of the postwar aluminum market and in order to encourage by their presence the greater expansion of this market.

Enormous Supplies of Surplus Secondary Aluminum

Possibly 3 billion pounds of aluminum metal inventories may hang over postwar markets for a number of years, most of it in secondary form, and much of it subject to disposal policies of the Surplus Property Board. This amount is about 10 times the 1939 markets for primary metal. If released by private holders and by the Government in too short a period of time, these supplies would be unmarketable, would destroy the price level, and would force a substantial contraction of the primary aluminum industry. The problem of disposal under the objectives of the Act is to release Government surpluses in a regulated manner over a period of years in order (1) to promote expanded and new uses of aluminum, (2) to spread the distribution widely through established industrial channels, (3) to prevent any single company from obtaining an undue proportion of the supply or hoarding it, (4) to sustain a low price level for secondary ingot that will promote expanded and new uses, and (5) to release quantities in such amounts that the primary industry continues in production at some reduced level that will not destroy the incentive for new producers to enter the industry in the next few years.

The total supply is estimated as follows:

Source	Pounds	To be disposed or owned by—
1. Aluminum to be recovered from war-wear, obsolete, and wrecked aircraft during 1945-47.....	1,000,000,000	AFC, Army, Navy.
2. Government stocks held by Metals Reserve Company:		
Primary ingot (July 31, 1945).....	300,000,000	AFC.
Secondary ingot (July 31, 1945).....	7,200,000	
Scrap metal (June 30, 1945).....	87,000,000	
	394,200,000	

Approximately.

Source	Pounds	To be disposed or ownership
1. Aluminum industry:		
Alcoa:		
Primary ingot and unprocessed stocks (June 30, 1945).....	254,800,000	Alcoa or Federal agencies.
In process or semilabricated (June 30, 1945).....	172,000,000	
	427,400,000	
Reynolds:		
Primary ingot and unprocessed stocks (June 30, 1945).....	21,000,000	Reynolds or Federal agencies.
In process or semilabricated (June 30, 1945).....	32,800,000	
	53,800,000	
Other producers:		
Primary ingot and unprocessed stocks (June 30, 1945).....	35,000,000	Producers or Federal agencies.
In process or semilabricated (June 30, 1945).....	35,000,000	
	100,000,000	
2. Aircraft industry:		
Subcontract work in process (June 30, 1945).....	600,700,000	Largely Federal agen- cies.
3. Other contractors:		
Stocks and work in process (June 30, 1945).....	200,000,000	Do.
4. Scrap metal held by dealers, smelters, and generators (June 30, 1945).....	741,000,000	Private enterprise.
Total.....	1,812,000,000	

¹ Approximately.

Source: War Production Board and Reconstruction Finance Corporation.

The disposal of this metal today is subject to the following regulations or circumstances:

1. Metal wholly owned by private companies, subject to their own control, includes scrap and some of the ingot and processed metal held by producers. The exact amount to be subject to private control has yet to be determined as a result of cancellation of war orders. Inventories resulting from cancelled orders may be retained for use of the contractor or turned back to the Federal agency that placed the original contract, in accordance with Regulation 9 of the Surplus Property Board. If retained by the contractor, the metal is sold to him at not less than 50 percent of cost or at market price, whichever is lower, except in the case of scrap which is retained at market price.
2. Metal turned back by contractors to Federal agencies and other metal owned by Federal agencies is subject to the stockpiling provisions of the Surplus Property Act, Section 22. If not needed by the agencies, as will generally be the case, it is to be declared surplus. That portion which meets the specifications set by the Army and Navy Munitions Board will be turned over to the Treasury Procurement Division for stockpiling for one year from January 3, 1946. On January 3, 1946, any of such metal which may be declared surplus will then be disposed of under regulations of the Surplus Property Board.

3. Metal held by Federal agencies may not be declared surplus for stockpiling unless the requirements of industry are met for 6 months, as determined by the War Production Board under section 22 of the act.

Of the various elements of supply shown in the preceding table, it is likely that Federal agencies will have to dispose of nearly 2 billion pounds consisting of (1) much of the metal held by the aircraft industry and other consumers because of cancellation of war orders and lack of immediate use by contractors for the metal, and (2) all of the aluminum to be recovered from aircraft, and all metal held by Metals Reserve Company. In addition, some of the metal held by the aluminum industry may revert to Federal agencies, but the approximate amount cannot be estimated for some time. No metal held by Federal agencies will have to be reserved for industry during the first six postwar months because the War Production Board has found that present stocks and scheduled production will meet industrial requirements for that period.

For permanent stockpile purposes, according to specifications of the Army and Navy Munitions Board, only the Government-owned primary ingot is satisfactory, the other items consisting of alloys that face more rapid technological obsolescence with the passage of time. Present specifications of the Munitions Board would permit acceptance of most of these alloys, but this would not be desirable except as a device for keeping the metal off of the market. Revised stockpile legislation is now being drafted for early submission to Congress.

The Surplus Property Board proposes to formulate disposal policies affecting metal declared surplus as follows:

1. The Board to issue at periodic intervals a statement to industry of the current and prospective inventories of aluminum metal both in the hands of private industry and Federal agencies. This statement would enable large consumers of metal to plan their production schedules ahead.
2. The Board to revise, if necessary, the floor price schedule under which disposal agencies may sell aluminum metal under Surplus War Property Administration regulation 5, as amended, in order to assure industry of an adequate supply of secondary ingot at a proper price, the exact figure to be determined in consultation with various industrial consumers of aluminum.
3. The Board will take appropriate measures in connection with the disposal of aluminum owned by the Government to spread the supply, to prevent hoarding, and to stimulate competition in processing metal.

4. The Board will recommend that metal other than standard primary ingot or pig be exempt from stockpile arrangements so that it may be distributed to industry in accordance with the foregoing policies.

Terms of Lease Complicate Disposal of Critical Plants

The best time for new producers to enter the industry is now, at the start of the reconversion program, when aluminum market opportunities are wide and orders are being placed for peacetime production. Prospective operators have advised the RFC that they would prefer to take over plants now in operating condition in order to avoid the problems incidental to starting up production in a shutdown plant. Such an arrangement would also have sustained employment in the plants to be transferred from Alcoa.

The RFC has lease or management contracts affecting 35 fabricating plants, 9 reduction plants, and 2 Bayer process alumina plants. Alcoa has been under lease agreement for 9 fabricating plants, 8 reduction plants, and the 2 Bayer alumina plants. Until September 8 only the most disposable plants were in operation, including the Hurricane Creek alumina plant and the reduction plants at Jones Mills, Troutdale, and Spokane.

In the case of all other lessees or operators, the contracts provide options to purchase, or rights of first refusal to purchase at the best price offered by another buyer. The Alcoa contracts contain no options or rights of first refusal in accordance with policy established in 1941 for the purpose of promoting competition in aluminum after the war.

However, there is a marked difference in the cancellation provisions. All of the other contractors operate under agreements permitting cancellation on 10 or 30 days' notice by the RFC when the plants are no longer needed for war production. Even in the case of the reduction plant managed by the Olin Corp., cancellation is permitted upon 30 days' notice. The Alcoa agreements on fabricating plants call for 90 days' notice after armistices are reached with all major war combatants.

The disposal of alumina and reduction plants has been complicated by terms of the lease agreement between RFC and Alcoa. The terms permitted either party to cancel the arrangement if production in any 6-month period fell below 40 percent of the aggregate productive capacity of all plants covered by the lease. The production of the plants had been below 40 percent for the 6-month period ending August 31, 1945. On September 1, a new 6-month period would have begun in which production would not have fallen below 40 percent because of the removal of the Riverbank plant from the lease. There-

fore, unless RFC had canceled the lease by August 31, Alcoa would have remained in possession of most of the plants until 1948. It would not have been possible under those circumstances without Alcoa's consent to make any arrangements to sell or to lease any of these plants to anyone else before 1948. On August 30, the RFC notified Alcoa of the cancellation of the lease on the recommendation of the Surplus Property Board. Under the lease the cancellation was to be effective in 60 days. In the interests of continuity of employment and of keeping the plants in operating condition, RFC offered to make an arrangement with Alcoa whereby it would continue to operate the plants for a year, subject to the right of either party to cancel on 60 days' notice. Alcoa declined to make an arrangement of this kind. In a conversation with the representatives of the RFC, a representative of Alcoa stated that the company was not interested in making a temporary arrangement of any kind for the operation of the plants (appendix 19).

On September 7 and 8, Alcoa shut down operation of the reduction plants and initiated steps to close the Hurricane Creek alumina plant within a few weeks.

However, Alcoa has advised the RFC that it will leave working inventories of raw materials in the plants and will negotiate for licensing the use of any patented equipment and processes.

CONCLUSIONS

The following conclusions serve as the basis for the disposal program which the Surplus Property Board is forming:

1. The aluminum industry in this country is still dominated by the Aluminum Co. of America.
2. The promotion of competition through Government plant disposal will foster greater production, employment, and the use of more of the Government facilities than will a continuation of the present situation. It will promote national security.
3. The key to disposal to private enterprise of the largest possible amount of the Government investment lies in bringing a new producer into the Hurricane Creek alumina plant, preferably a producer who also will operate reduction capacity. The output of the alumina plant must be made available to any other producers taking over Government reduction plants at a price that will permit competition with Alcoa. Fortunately, the operator of Hurricane Creek can sell to others at or near cost because the larger his output, the lower his average cost and the greater the saving in the cost of the alumina he consumes himself.

4. The Hurricane Creek plant can operate at least for an interim period of some years with bauxite supplied by independent mining companies in Arkansas, augmented by the stockpile held by the Government. This will afford time in which reduction plant operators can arrange for foreign reserves of high-grade bauxite. It is desirable to explore whether some foreign bauxite may become accessible under international settlements of wartime obligations and from Japanese mandated islands.
5. A number of plants have the disadvantages of poor location, large capacity, and specialized products. It is necessary for the Government to make engineering studies of what must be done to recover the greatest possible portion of the investment and to take certain measures including plant alterations and diversifications of equipment, provided the cost will be recoverable.
6. If it is necessary to do so Congress should consider modifying the laws affecting the price of power sold from Federal projects in order to remove disadvantages in costs arising from inflexible power contracts with aluminum producers.
7. The total primary aluminum capacity in this country exceeds immediate postwar market requirements, but there should be room now for new producers, having their own fabricating capacity or other market outlets, to gain a foothold in the industry by sharing existing markets and contributing to the expansion of those markets. The Army and Navy Munitions Board has recommended to Congress a stockpile of primary aluminum and bauxite for national defense, and Government policy can also be shaped, if necessary, to enable new producers, along with established old producers, to contribute to that stockpile.
8. The volume of surplus secondary aluminum is so great that a program should be adopted to spread this supply over a number of years for the purpose of encouraging permanent new uses, promoting competition in the processing of aluminum, and avoiding the discouragement of new producers from entering the primary aluminum industry.
9. The problems of promoting new competition call for liberal terms of lease or sale of plants with prices to be determined by earning ability. It will be necessary for the Government to aid in offsetting the subsidized advantages of the Aluminum Company of Canada.

Part IV

ALTERNATIVE DISPOSAL PROGRAMS**CANDIDATES FOR DISPOSAL**

A number of domestic corporations as well as representatives of foreign corporations and Governments have expressed definite interest in leasing or purchasing various plants. Discussions and correspondence with their representatives have indicated three possible program alternatives.

Alcoa wishes to lease or buy the Hurricane Creek alumina plant and buy the Baton Rouge plant for removal to the Pacific Northwest. Alcoa also wishes to acquire the Jones Mills, Troutdale, and Massena reduction plants. The American Smelting & Refining Co. has expressed an interest in acquiring Hurricane Creek and one reduction plant among Jones Mills, Troutdale, and Massena. The Reynolds Metals Co. is interested in Hurricane Creek and Baton Rouge, the Troutdale, Spokane, and Jones Mills plants, and one sheet mill. Kaiser Co., Inc., is interested in a broad program that would lead to selection of capacity for alumina and metal, the rolling mill at Spokane, and has stated that it will take the Spokane rolling mill only in conjunction with the Spokane reduction plant. The Columbia Metals Corp. wishes to lease the reduction plants at Troutdale and Spokane. The Bohn Aluminum & Brass Corp. is interested in some reduction capacity. The Olin Industries, Inc., have expressed an interest in reduction capacity provided they are assured a supply of competitive bauxite. Little interest thus far has been expressed in the major fabricating plants, but a few companies have stated they wish to acquire smaller plants or some equipment.

Alcoa's offers have been for outright purchase, except in the case of the Hurricane Creek plant, which it offers to purchase or lease. The other candidates who have indicated the kind of terms they will require generally wish to lease alumina and reduction plants and eventually acquire them by purchase. The other candidates require Government assurance of a bauxite supply with which to begin business or assurance of a supply of alumina at a price competitive with Alcoa. They also wish liberal rental terms in which their risks of loss are minimized; they offer to risk their own working capital. Some candidates expect the Government to coordinate its procurement of

aluminum for the national defense stockpile with their plant operations so that they can sell some metal to the Government while building up their commercial markets. Thus, disposal of the key plants to others than Alcoa calls for Government cooperation with the new operators.

The present degree of interest in plant acquisition has arisen slowly in the absence of a campaign of disposal. As a preliminary step, the RFC recently sent a telegram to 227 companies asking each of them whether it would be interested in acquiring any of the RFC plants. Replies indicating an interest in the plants have been received from 6 companies additional to those that have been mentioned. Before actually negotiating for the sale of specific plants, the Surplus Property Board and the RFC had first to determine the problems of disposal and then formulate the policies. With the adoption of the policies stated in this report, the Board and the RFC can undertake an aggressive campaign to stimulate greater interest in plant acquisition. The results of the engineering investigations will be publicized and distributed to likely candidates, particularly among steel, lead, zinc, copper, and other metal refining and fabricating companies. Results from this selling campaign will require some time to materialize.

PROGRAM ACCEPTABLE TO ALCOA

Recognizing Alcoa's position in the industry and its present control by lease of the best Government plants, the Board has held discussions with Alcoa executives in order to determine whether some disposal program could be framed that would be mutually acceptable.

These discussions led to the following disposal plan, which Alcoa told a representative of the Board they would accept:

1. Alcoa wished to acquire certain Government plants. It took the position that it could acquire these plants in harmony with the Federal court decision, provided that thereafter it produced or sold not to exceed 60 to 64 percent of the aluminum ingot produced or sold in the United States. However, it expected the court to determine what percentage between 60 and 90 percent would constitute a monopoly.
2. Under this interpretation Alcoa stated that it would buy the Massena, Jones Mills, and Troutdale reduction plants, but would first release the Troutdale plant from the lease agreement for 6 months, and then acquire it if no one else took it.

It would also release the Spokane reduction plant from the lease for disposal to anyone.¹

¹ However, Alcoa also stated that it would like to acquire the Spokane reduction plant in testimony before the Senate Committee Investigating the National Defense Program at Spokane, August 22, 1945.

3. Alcoa would buy or lease the Hurricane Creek plant, and in the case of a lease would be willing to sell alumina to anyone at a price set by the RFC.
4. Alcoa would buy the Baton Rouge alumina plant and remove it to the Pacific Northwest to supply its own and any other reduction plants.

The foregoing acquisitions were to be accompanied by other measures:

1. Alcoa would agree to operate all of its reduction plants at the same percentage of capacity averaged over an annual period.
2. The tariff on alumina of \$10 per ton, and on bauxite of \$1 should be cut in half.
3. The Surplus Property Board was to recommend to the District Court of the Southern District of New York in which the antitrust suit was pending against Alcoa that so long as Alcoa did not produce more than 75 percent of the domestic aluminum supply, the company should not be regarded as in violation of the Sherman Act.
4. It was assumed that imports from Canada and elsewhere would take place in volume that would bring Alcoa's domestic production below the percentage fixed by the court as constituting monopoly.

In these discussions, Alcoa made it clear that it did not need the Government plants, but would take them in order to remove the Government from the aluminum industry. Alcoa held that it would be a concession on its part to operate the western Government plants at the same rate as its own present plants because of the lower production costs of the latter.

This program was unacceptable to the Surplus Property Board for the following reasons:

1. It would increase rather than reduce the monopoly of Alcoa in primary metal. It would thereby prevent the expansion of the production and employment that would result from more competition. It was therefore contrary to the policies and objectives of the Surplus Property Act.

This plan would turn over to Alcoa three of the four best Government reduction plants. The fourth, at Spokane, would be left stranded without an independent source of alumina and would not be readily disposable.

The plan would give Alcoa control of the key Government alumina plant at Hurricane Creek and place it in the position of supplying alumina to any operators willing to take over the less desirable Government reduction plants

Other candidates for reduction plants have indicated their unwillingness to operate under such an arrangement.

2. This plan would enable Alcoa to take the Government plants off the market. The immediate effect of the plan would be to spread employment among Alcoa plants without increasing it. The long-range effect would be to keep employment lower than competition would provide.

Alcoa already has 828 million pounds of economical aluminum capacity, able to produce at average costs not greater than the best Government plants could possibly achieve. But Alcoa is not now using all of its own capacity and has canceled power contracts this year to reduce its production still further. At the end of July, it had idle 240 million pounds of capacity and had canceled TVA and Bonneville power contracts equivalent to additional primary production of 150 million pounds per year. By the end of the year, Alcoa would then have roughly 390 million pounds of idle low-cost capacity. It has indicated that it expects markets for primary metal to require 5 years before the present private capacity would be necessary. Therefore, the Government plants would not be needed in the Alcoa corporate set-up for at least that period. If Alted capacity were linked with Alcoa's, the period would be even longer.

3. This plan assumes that most of the competition with Alcoa in this country would be furnished by Canadian imports. The Surplus Property Board cannot regard this assumption as a satisfactory solution of the competitive situation for two reasons: (1) Canadian aluminum and Alcoa aluminum are subject to the same stockholder control; and (2) this arrangement would deprive American workers of opportunities for employment in the aluminum industry.

The Board has asked Alcoa whether it would cooperate in a disposal program to increase competition in the industry, but Alcoa's attitude has been noncommittal. At the same time, the RFC asked Alcoa whether it would assist a new operator of Hurricane Creek by providing him with access to plant records of production experience and blueprints, designs, and instructions for operating equipment. Alcoa has refused the RFC. The Board and the RFC asked Alcoa to accept a revised and more flexible lease on the alumina and reduction plants in order to avert the necessity for immediate cancellation and in order to sustain employment in the plants until the new operators could take over and thereby save the Government the costs of reopening shut-down plants. Alcoa refused to accept a new lease but

did agree to leave working inventories in the plants and to negotiate for licensing the use of patented equipment and processes.

A LIMITED COMPETITIVE PROGRAM

The Board has considered a course of action that would leave up to new operators much of the responsibility for meeting the difficult problems of entering the industry on terms competitive with Alcoa. Such a program would place exclusively upon such operators the task of securing bauxite, of bearing costs of alterations and preparation of plants for competitive operation, and of developing markets. It would call for a relatively passive attitude on the part of the RFC in formulating terms of lease or sale that are needed to provide incentive for new producers.

Such a course of action would result in failure of disposal under the objectives of the Surplus Property Act. Only Alcoa has shown a willingness to take over plants under any such conditions. Discussions between prospects, the Board and RFC have shown that the field of candidates would therefore be highly restricted and the chances would be very poor for survival.

The Board therefore recommends a program in which the Government places its full backing behind new competition in the aluminum industry.

THE RECOMMENDED COMPETITIVE PROGRAM

1. *Priorities of disposal.*—The following priorities will apply to all plants and equipment owned by the Government, regardless of the amount of investment:
 - a. Prospective competitors of Alcoa will have first choice of plants and equipment.
 - b. Alcoa will be given the opportunity to take over certain desired facilities, subject to approval of the Attorney General, but only under terms of lease or sale that give no competitive advantage over others.
 - c. The Government will consider maintaining in stand-by condition individual plants as necessary insurance for the national defense upon recommendation of the War and Navy Departments.
 - d. Other facilities will be offered to private enterprise wishing to use buildings or equipment for purposes other than aluminum production.
 - e. Plants and equipment not otherwise needed may be exported to members of the United Nations, subject to approval of the State, War, and Navy Departments.

The foregoing priorities may be modified in cases where research on aluminum processes and products can be fostered by selling, lending, or donating equipment that would not otherwise be used in the aluminum industry, provided the results of such research would become public property.

2. *Preferences among bidders for key plants.*—It is essential that key plants be disposed of to those bidders who have the organizations, experience, and financial resources that afford the greatest prospects for successful survival and maximum production in industry. Preference will therefore be given to such candidates.
3. *Individual plant disposal.*—The plan of the Board is to dispose of plants as follows:

Alumina plants:

Hurricane Creek will be offered to a competitor of Alcoa under terms that guarantee the sale of alumina to others on a basis assuring a competitive price.

Baton Rouge will be offered in whole or part to a competitor of Alcoa. If no competitor of Alcoa can be found who believes that the plant can be operated in its present location, the Board will consider the desirability of removing some or all of the equipment to the Pacific Northwest for any competitor. If these arrangements cannot be made, the plant or part of it will be offered to Alcoa for removal to the Pacific Northwest, subject to approval of the Attorney General.

Lime-soda-sinter facilities:

These facilities are adjuncts to the Alcoa owned alumina plants at Mobile and East St. Louis. They will be offered to Alcoa, subject to approval of the Attorney General, on terms that confer no advantage in production costs over competitors.

Semicommercial alumina plants:

These four small plants will be kept in production until they have had time to demonstrate the feasibility or lack of feasibility of the processes. They will then be offered to the operators. Those not accepted will be turned over to the Bureau of Mines for experimental work under authority already possessed by the Bureau.

Reduction plants:

Jones Mills, Troutdale, Spokane, and Tacoma will be offered to competitors of Alcoa. Undisposed-of plants may be held in stand-by for an indeterminate period because of the prospective commercial value of these plants when aluminum markets expand substantially.

Massena will be offered on lease to Alcoa, subject to approval of the Attorney General, upon terms that confer no advantage over competitors. This plant will be held by the Government until possibilities are determined for disposal to others when a low-cost power supply becomes available.

Maspeth, Burlington, Los Angeles, and Riverbank. If unacceptable to any bidders, these plants will either be held in stand-by upon recommendation of the Army and Navy Munitions Board or else disposed of according to the recommended priorities.

Scrambled equipment in private plants:

First choice will go to owners of the plants in which the equipment is located. Equipment not thus taken will be disposed of according to the recommended priorities.

Fabricating plants:

Holdings of valid options or rights of first purchase will have first choice to exercise their rights. First choice on plants not under option and second choice on plants subject to prior rights of others will be granted to any operators of Government reduction plants in order to enable them to integrate their business more favorably. Third choice will go to any others according to the recommended priorities.

4. *Terms of lease or sale.*—The alumina, reduction, and large fabricating plants will first be disposed of by sale or lease to competitors of Alcoa. It may be that conditions will not justify the Government in making sales of these key plants until experience has demonstrated survival prospects.

Facilities sold to Alcoa and other facilities including smaller fabricating plants sold to others will be disposed of by lease or sale, according to the circumstances.

Rental terms and sales prices will be fixed with due regard to earning ability of the plant and not necessarily with regard to original cost or replacement value. On alumina and reduction plants, leasing terms may be offered, if necessary, as favorable as those received by Alcoa under its original lease. These terms may provide for the RFC to stand losses for an initial period, for the profits to be shared 85 percent to the Government and 15 percent to the operator, and in addition for the RFC to review and approve the price at which metal is sold, the top salaries, and extraordinary expenses. It is the belief of the Board that the operators should assume some of the risks. Should the operators wish a larger share of the profits, terms would call for

greater assumption of risks by them. In any event, the RFC will require that the operators assume reasonable risks of working capital and that the Government withdraw its assumption of other risks after some fair period.

5. *Measures of Government support.*—The following general measures will be undertaken by the Surplus Property Board or under its direction in order to facilitate the success of new producers in meeting basic problems:

- a. *Bauxite supply.*—The Government stockpile of bauxite at Hurricane Creek will be available to the plant operator. In addition, the Board will ask the help of the appropriate Federal agencies in exploring the possibilities of securing foreign ore by means of international agreements.
- b. *Engineering investigations* will be made to determine changes necessary to place plants in the most advantageous position to compete, and the Government will finance such changes where the costs appear to be recoverable.
- c. The Board to put into effect the policies already described to control the disposal of surplus secondary metal so that its maximum use is promoted without discouragement of new primary metal producers.

CONCLUSION

The Board reiterates its belief that in the case of the aluminum plants the objectives of the Surplus Property Act of 1944 can best be accomplished by a disposal plan that will promote competition in the industry. The program described in this report in the opinion of the Board seems more likely to promote competition and thus to achieve the purposes of the statute than any other proposal that has been called to the Board's attention. The Board recognizes that conditions beyond its control may make this program impossible of accomplishment. In that event, unless the courts dissolve or reorganize Alcoa under the Sherman Act, it will be for Congress to consider whether to leave the aluminum industry under the domination of one company or whether to authorize the Government either by subsidized or direct operation of key plants to provide some measure of production that is independent of Alcoa's control.

Appendix 1

THE GOVERNMENT ALUMINUM PLANTS

Statement Prepared By the Reconstruction Finance Corporation

ALUMINA PLANTS

Bayer Plants

The Government-owned alumina plants at Hurricane Creek and Baton Rouge employ the Bayer process for the extraction of alumina from bauxite. Briefly, by this process bauxite is dried, ground, and digested with caustic soda which unites with the alumina content of the bauxite to form sodium aluminate. The iron, silicate, and other impurities as well as a certain quantity of alumina and caustic soda are filtered out as red mud. The aluminate continues to the precipitating tanks where it is mixed with a "seed" charge of aluminum hydrate from a previous cycle. Under agitation and gradual cooling, crystallized aluminum trihydrate is formed which is in turn converted to finished alumina in rotary kilns at high temperatures.

Both plants also contain lime-soda-sinter plants which treat the red mud, formerly a waste product, and recover most of its alumina and soda ash content. The plants also contain completely equipped laboratories.

Plancor 226-AO, Aluminum Co. of America, Baton Rouge, La.

Land.....	\$770, 460
Buildings.....	8, 757, 880
Equipment.....	16, 121, 840
Tools and automotive.....	33, 205
Total.....	25, 683, 385

This is a complete Bayer process alumina plant of 1,000,000,000 pounds annual capacity with a sinter plant. The plant was closed in July 1944 and has been in stand-by status since then.

The plant site consists of 212 acres, and there are some thirty-four processing buildings. Equipment is standard for this type and size plant.

Plancor 226-X, Aluminum Co. of America, Hurricane Creek, Ark.

Land.....	\$668, 610
Buildings.....	13, 078, 900
Equipment.....	25, 471, 300
Tools and automotive.....	111, 813
Total.....	39, 330, 523

These facilities consist of a complete Bayer process plant capable of producing 1,555,000,000 pounds of alumina a year, a sinter plant, and a synthetic cryolite and aluminum fluoride plant with an annual capacity of 3,000,000 pounds of

¹ All costs are actual disbursements as of May 21, 1945, unless otherwise indicated. Some capacities shown differ from capacities given elsewhere in this report because of different bases of computation. Rivet and powder plants are excluded from this statement.

cryolite and 40,000,000 pounds of aluminum fluoride. The cryolite plant has never operated. There are 465 acres of land and 50 buildings.

Sinter Plants

The Government has also built sintering plants at East St. Louis, Ill., and Mobile, Ala., to treat the red mud generated at the Alcoa plants in these cities. These plants can only be operated in connection with the lessee's facilities. The East St. Louis plant has been in operation for some time. The Mobile facilities have never operated.

Plancor 1370, Aluminum Ore Co. (Alcoa subsidiary) East St. Louis, Ill.

Land.....	\$137,930
Buildings.....	4,702,480
Equipment.....	7,800,172
Tools and automotive.....	7,004
Total.....	12,647,586

Plancor 1371, Aluminum Ore Co., (Alcoa subsidiary) Mobile, Ala.

Land.....	\$80,300
Buildings.....	4,891,840
Equipment.....	8,732,138
Tools and automotive.....	7,122
Total.....	13,711,400

Experimental Alumina Plants

There are also four Government-owned experimental alumina plants for the production of alumina from clays and other ores. The results of operations and studies made indicate that these processes are mechanically feasible, but that the cost of production may be too high to permit normal commercial operations. The Harleyville, S. C. and Salt Lake City, Utah, plants have been completed, and the latter has been in operation on a small scale. The other two are nearing completion.

Plancor 1831, Ancor Corp., Harleyville, S. C.

Land.....	\$80,854
Buildings.....	1,370,861
Equipment.....	1,710,940
Tools and automotive.....	53,450
Total.....	3,225,105

Rated capacity of this plant is 36,500,000 pounds of alumina annually. Raw material is kaolin which is treated with soda ash. A byproduct has possible use as an agricultural chemical.

Plancor 1865, Columbia Metals Corp., Salem, Oreg.

Land.....	\$73,281
Buildings.....	941,378
Equipment.....	2,260,529
Tools and automotive.....	76,702
Total.....	3,356,888

This plant has a designed capacity of 36,000,000 pounds of alumina annually. Clay is used as raw material which is treated with ammonium sulphate. The byproduct, silica, may have some value.

Plancor 291, Kalumite, Inc., Meryerals, Utah (mining), Salt Lake City, Utah (processing)

Land.....	\$142, 373
Buildings.....	1, 377, 905
Equipment.....	2, 628, 165
Tools and automotive.....	164, 850
Total.....	4, 208, 223

The designed annual capacity of the plant is 72,000,000 pounds of alumina. This plant is an acid plant (sulphuric acid) for treatment of alunite. Potassium sulphate should be produced as byproduct.

Plancor 1844, Monolith Portland Midwest Co., Laramie, Wyoming

Land.....	\$12, 715
Buildings.....	1, 572, 210
Equipment.....	1, 603, 048
Tools and automotive.....	40, 434
Total.....	3, 230, 407

This plant was built to produce 36,000,000 pounds of alumina annually. Calcium silicate produced as a byproduct is pumped to adjoining cement plant. Alumina is produced from anorthosite rock mixed with limestone.

ALUMINUM PLANTS

All of the reduction plants except the one at Tacoma are built according to the same design and differ only in the number of potlines and as to whether or not they have facilities for making carbon electrodes. The following description applies to all but the Tacoma plant.

Alumina is unloaded from the cars by dumping or suction hose and carried on overhead conveyors to large ore storage tanks about 64 feet in height from which the alumina is fed by gravity to the reduction pots. The pots are housed 64 to a building; and two buildings constitute a conventional potline with a designed annual capacity of 33 million pounds but an actual proven capacity of about 28 million pounds. The so-called pots are those commonly used in the Hall-Heroult process and are really electrolytic cells. Alumina is introduced into a bath of molten cryolite or aluminum fluoride in which it is dissolved. A low-voltage but high ampereage direct current is passed through the liquid from carbon electrodes to the carbon lining of the cells. This current liberates the oxygen in the alumina and releases pure aluminum which collects in a molten state at the bottom of the pots and is removed by syphoning into ladles, which are conveyed to the pouring rooms. The metal is there poured into pig molds. The pigs are shipped direct or taken to the metal room for remelting and alloying.

Since a large amount of direct current is required in the process, elaborate rectifier transformers are a part of each plant. Current is carried from the rectifiers to the pots by silver bus bars, which were used in order to conserve copper. The silver was loaned by the United States Treasury and must be returned after the war.

Where carbon facilities are installed they consist of a coke and pitch unloading and storage building. This material is carried by conveyors to other buildings for crushing, mixing, pressing, and baking, and then assembled into finished electrodes.

All of the plants have chemical and mechanical laboratories.

Plancor 236-K, Aluminum Co. of America, Jones Mills, Ark.

Land.....	\$419, 613
Buildings.....	7, 437, 000
Equipment.....	21, 178, 380
Tools and automotive.....	39, 297
Total.....	29, 252, 389

This reduction plant consists of four potlines. There is a carbon electrode plant capable of producing 57,000,000 pounds of electrodes a year. A power plant of 78,000 kilowatts generates sufficient power for two of the potlines. Fuel for the generators is supplied by natural gas. One of the potlines was placed in stand-by in August 1944.

Plancor 236-A-4, Aluminum Co. of America, Riverbank, Calif.

Land.....	\$140, 854
Buildings.....	4, 411, 346
Equipment.....	7, 000, 300
Tools and automotive.....	12, 024
Total.....	11, 562, 554

This plant has three potlines, although one was never put in operation. There is no carbon electrode plant. One potline was shut down in May 1943 and the entire plant placed in stand-by in October of 1944.

Plancor 236-A1, Aluminum Co. of America, Queens, N. Y.

Land.....	\$1, 008, 300
Buildings.....	11, 004, 140
Equipment.....	19, 778, 900
Tools and automotive.....	44, 563
Total.....	32, 871, 103

This plant consists of eight potlines but no electrode facilities. Production was cut to six potlines in December 1943, to four in April 1944, and production ceased in June 1944. The plant was dismantled in September 1944 for use as a Navy yard facility.

Plancor 236-AB, Aluminum Co. of America, Burlington, N. J.

Land.....	\$524, 000
Buildings.....	6, 802, 300
Equipment.....	2, 041, 730
Tools and automotive.....	43, 000
Total.....	10, 762, 030

This plant consists of three potlines, one of which was closed in December 1943. The entire plant was put in stand-by in October 1944. One potline was dismantled during January 1945. There are no electrode facilities.

Plancor 220-LA, Aluminum Co. of America, Los Angeles, Calif.

Land.....	\$287, 639
Buildings.....	8, 014, 080
Equipment.....	15, 718, 472
Tools and automotive.....	22, 050

Total..... 24, 042, 241

This reduction plant consists of five potlines, two of which were never placed in operation. The carbon electrode plant has an annual capacity of 86,400,000 pounds of electrodes. One potline was closed in August 1944. The plant went into stand-by in September 1944.

Plancor 226-NY, Aluminum Co. of America, Massena, N. Y.

Land.....	\$268, 253
Buildings.....	7, 996, 777
Equipment.....	10, 795, 360
Tools and automotive.....	20, 620

Total..... 19, 081, 019

This reduction plant consists of three potlines. The carbon electrode plant has an annual capacity of 86,400,000 pounds of electrodes. A cutback of one potline took place in January 1944. The plant was closed in October 1944.

Plancor 226-S, Aluminum Co. of America, Spokane, Wash.

Land.....	\$178, 752
Buildings.....	6, 680, 900
Equipment.....	15, 384, 090
Tools and automotive.....	26, 220

Total..... 22, 269, 962

This reduction plant consists of six potlines. The carbon electrode plant has an annual capacity of 57,600,000 pounds of electrodes. Two potlines were closed in August 1944 but again placed in operation in March 1945.

Plancor 226-O, Aluminum Co. of America, Troutdale, Oreg.

Land.....	\$283, 455
Buildings.....	5, 789, 100
Equipment.....	12, 785, 475
Tools and automotive.....	39, 724

Total..... 18, 897, 754

This reduction plant consists of four potlines. The carbon electrode plant has an annual capacity of 86,400,000 pounds of electrodes. Cutbacks of one potline were made in May and August of 1944.

Placer 245, Olin Industries, Inc., Tacoma, Wash.

Land.....	\$223, 176
Buildings.....	1, 893, 427
Equipment.....	23, 834, 640
Tools and automotive.....	28, 590
Administrative expense.....	279, 407
Total.....	6, 309, 240

This plant employs the so-called Soderberg continuous electrode for the reduction of alumina. By this process, instead of prebaked, removable anodes used in the Hall-Heroult process, a carbonaceous mixture is introduced into a mold extending above the pot, where it is self baked in place. The entire process is continuous. Certain advantages are claimed for this method, but up to the present there is no conclusive evidence as to which is the more desirable.

The Tacoma plant has had consistently higher production costs than the other DPC plants in the Northwest, but it is thought that this is due to the comparatively small size of the plant and the inexperience of the management, rather than to any disadvantages inherent in the process.

The rated capacity of the plant is 41,500,000 pounds per annum.

FABRICATING PLANTS

The Government has invested approximately \$345,000,000 in aluminum fabricating plants, in addition to about \$17,000,000 in equipment installed in privately owned plants.

The rated annual capacity of the Government-owned plants is close to 2 billion pounds and is equivalent to approximately 40 percent of the total capacity of the industry. Three remarks are pertinent with respect to figures for capacity of Government-owned plants which appear in this report, viz:

1. They are based on the type of product which the plants are manufacturing during war time. Actual postwar capacity may differ, depending upon such factors as the alloys used, weight per unit of end product and the exactitude with which specifications must be met.

2. They are based on continuous three-shift operation which is not likely to be followed in peacetime.

3. The total fabricating capacity of 2 billion pounds as given above includes substantial duplications. For example, tubing appears also as tube blooms and forging stock is included as rods and bars.

In general, Government-owned plants are very large and highly specialized. They were designed chiefly to produce semifabricated materials for the vast war-time aircraft construction program. Because of their size and the nature of their products, considerable difficulty may be experienced in finding peacetime utilization for many of them unless a very substantial increase in the use of aluminum takes place after the war.

The sites, products, locations, and operators of the plants were chosen by the sponsoring agency, in almost all cases the WPB or the Army Air Forces, with a view solely to wartime requirements. Speed was the prime requirement. Size was determined by the limited amount of supervisory personnel available or which could be trained in a relatively brief period. Locations were chosen largely because of manpower and transportation facilities. Operators were selected from concerns willing and able to run the plants.

Privately owned fabricating facilities were also greatly increased from 1939 to 1942. These were constructed in localities and for purposes which seemed to promise profitable peacetime operation. The Government was left to construct those with limited postwar commercial appeal.

The Government-owned plants are situated for the most part in the North-Central section. It has been suggested that for economic reasons, it would have been better to have built them close to the metal producing plants. However, it should be noted that freight rates on aluminum ingot are substantially lower than for semifabricated aluminum parts and also that aluminum products are generally sold f. o. b. purchaser's plant. Therefore, other things being equal, the location of fabricating plants near large consuming areas appears most desirable.

Two other important general observations should be made in connection with Government plants. First, they were built under conditions with respect to speed, season of the year, protection features, etc., which made their costs substantially higher than those which would have prevailed under normal conditions. DPC is engaged in making surveys of its plants to determine the amount of these excess costs. Second, because of material shortages many old plants were converted to aluminum fabricating plants. Some of these were not entirely suitable for the purpose and would not have been used under normal circumstances. Moreover, for the same reason, substitute materials were used in both new construction and rehabilitation which were not of the most desirable nature. Finally, in some cases, old or substitute equipment was installed in plants, which permitted satisfactory wartime production, but at operating costs in excess of those which might be attained by more modern machinery.

Rolling Mills

Rolling mills produce plate, sheet—both flat and coiled, and foil in flat mills; while rod, bars, and special shapes are made in structural rolling mills. Among the first and most important applications of aluminum sheet is cooking utensils. Aircraft consumes large quantities of strong alloy sheet for structural members as well as sheathing. Railway cars require sheet for sides and roofs and plate for framework. It is thought that considerable quantities of sheet will be used after the war in automobile trucks, trailers, and buses, as well as for the superstructure of ships and the hulls of small boats. Another important use is by the chemical industry for ovens, stills, tanks, shipping containers, and tank cars. Much furniture is made from aluminum sheet, and millions of bottle seals and jar caps are manufactured from this sheet. Less well-known uses are for lithographic plate, artificial limbs, fan blades, ventilators, shingles, and miscellaneous construction work. A great deal of sheet is sold to job makers, and this market may be expected to grow.

Rod and bar are sold largely as machining and forging stock or for drawing into wire and cable. The wire may be further processed into nails, screws, and rivets.

Prior to 1940, plate and sheet capacity in the United States was approximately 590,000,000 pounds per annum. Since then Alcoa has constructed its large North plant at Alcoa, Tennessee, with a capacity of about 420,000,000 pounds annually, and 684,000,000 pounds of Government-owned plants have been built, making a present installed capacity of 1,600,000,000 pounds, or about three times that of before the war.

Plancor 1061, Aluminum Co. of America, Spokane (Trentwood), Wash.

COSTS

Land and improvements.....	\$374,787
Buildings.....	18,255,018
Machinery and equipment.....	31,930,725
Tools and automotive.....	69,714

Total..... 47,630,239

This plant, as well as Plancor 652, was constructed from the plans of Alcoa's North plant, although the rated capacities are somewhat smaller being 288,000,000 pounds annually of plate, sheet and strip.

Remaining equipment consists of thirty-two 27,000-pound and six 14,000-pound reverberatory furnaces capable of casting 600 million pounds of D. C. sheet ingot annually. There are 130-inch and 112-inch reversing hot mills, which reduce the ingot to a $\frac{1}{2}$ -inch slab, and a continuous five stand, 90-inch hot mill which rolls plate to finished gage and prepares sheet and coil for the 3 cold mills. The latter are 2 stand tandem 71-inch and 2 single stand 71-inch which reduces the sheet to final gage. Finally there is a 12 stand flattening mill, 10 stands at which are 84-inch and 2 110-inch. The plant contains the usual scalping, trimming, preheating, aging, dipping, stretching, and finishing equipment as well as an excellent machine shop.

Plancor 652, Aluminum Co. of America, Chicago (McCook), Ill.

COSTS

Land and improvements.....	\$752,396
Buildings.....	18,896,304
Machinery and equipment.....	24,561,935
Tools and automotive.....	85,102

Total..... 44,326,737

Design, equipment and capacity are identical with the preceding plant except that it has thirty-four 27,000-pound reverberatory remelt furnaces, the second hot mill is 96 inches, and the four cold mills consist of 2 single-stand and 2 double-stand 72-inch mills.

Inquiries have been received from England as to the possibility of purchasing the plant and transporting it there. Reynolds Metals Company has also evidenced interest.

Plancor 236, Aluminum Co. of America, Newark (Heath), Ohio

COSTS

Land and improvements.....	\$315,340
Buildings.....	11,698,681
Machinery and equipment.....	11,153,212
Tools and automotive.....	20,785

Total..... 22,198,018

This plant was built for the production of rods and bars and began production in May 1942. Its ingot casting facilities are very large, considerably in excess of its rolling capacity, and amount to about 485 million pounds annually. Blooming capacity is 248 million pounds, of which 180 million pounds can be rolled in the plant to produce 180 million pounds of rods and bars, the remainder being available for sale as such.

The plant contains nineteen 27,000-pound and four 14,000-pound reverberatory melting furnaces. The rolling equipment consists of a 38-inch blooming mill and a tandem 22-inch and 20-inch rod and bar mill. Excellent facilities are available for scalping, cutting, preheating, heat treating, straightening, and finishing, and there is a well-equipped machine shop.

The buildings and equipment are modern and efficient in every respect. However, it has never operated at capacity.

Reynolds Metals engineers have inspected the plant.

Placer 65, Reynolds Alloys Co., Listerhill, Ala.

COSTS (AS OF MARCH 31, 1946)

Land and improvements.....	\$225,352
Buildings.....	7,144,448
Machinery and equipment.....	12,628,539
Tools and automotive.....	32,961
Total.....	20,031,300

This plant is adjacent to the alumina and aluminum reduction plants of the Reynolds Metals Co. It consists of a single remelt building which supplies ingots to a sheet mill and a rod and bar mill.¹ The entire plant was built at a cost to DPC of about \$20,000,000; however, this figure does not include \$3,800,000 worth of essential equipment in both mills owned by the lessee. Production started in July 1941.

The remelt room and dross house contain 34 large reverberatory furnaces with an annual casting capacity of approximately 500 million pounds.

The sheet mill, with an estimated capacity of 170 million pounds annually, contains a 112-inch reversing and a 66-inch three stand tandem hot mill. The cold mills consist of a 112-inch, a 66-inch two stand tandem, a 52-inch four high single stand, and a 110-inch finishing mill. All of these except the third stand of the tandem hot mill and the 66-inch cold mill are owned by the lessee.

The structural mill is capable of producing about 120 million pounds per annum of shapes up to 8 inches. The rolling mill proper belongs to the lessee and had been in use before being installed here. The remaining equipment is DPC property.

Mr. Reynolds testified before the Senate Small Business Committee in February that his company was prepared to purchase the entire plant at cost less 35 percent (which he estimated to represent excessive wartime construction costs) less rentals paid, which he calculated at that time to be \$6,500,000. This amounts to a purchase price of about \$6,500,000 which he suggested should be paid over a period of 20 years, with interest at 3 percent.

Foundries

After rolling mills, foundries are the most important group of aluminum-fabricating facilities both in plant capacity and in output. Together with the rolling mills they would appear to have the most promising postwar future.

Aluminum can be cast by three methods: sand, permanent mold, and die. Briefly, sand castings are made by pouring molten aluminum alloy into a sand mold, allowing it to solidify and cool, removing the casting from the sand, and trimming it. Permanent mold castings are made in the same way, except that

¹ A bloom mill was contemplated under the original plans and some of the equipment has been delivered but not installed.

the molds are of metal instead of sand. In both cases the molds are filled by gravity. In die casting the metal mold is filled with molten metal by a hydrostatic pressure, usually of 100 to 500 pounds per square inch.

The process employed is determined by the design, size, and weight, allowable tolerances and the cost. Greater dimensional precision is obtainable by die casting and is least so in sand castings. Where soundness is the chief importance, die casting is preferred. More finishing is needed in sand castings. If only a small quantity of the article is required, sand castings will prove least expensive. Very large castings and those requiring intricate coring are produced in sand molds.

Unlike most other aluminum fabricating processes, casting is well adapted to small scale operations. It can be and often is carried on successfully in small plants with modest capital. There are approximately 800 aluminum sand foundries with capacities of under 100,000 pounds annually.

Government-owned sand foundries are very large and in most cases highly specialized. Some are part of aircraft engine plants, but are capable of independent operation.

Postwar utilization of these plants will depend upon the demand for aluminum castings, and, in the case of the special purpose plants, the cost of converting them to general purpose foundry work and the skill with which this is accomplished.

General Purpose Sand Foundries

Plancor 1808, General Motors, Delco-Remy, Bedford, Ind.

COSTS	
Land and improvements.....	\$26,380
Buildings.....	980,314
Machinery and equipment.....	1,978,156
Tools and automotive.....	15,500
Total.....	3,000,350

This plant has a rated capacity of 10,200,000 pounds annually and is currently engaged in the production of water-cooled Packard cylinder heads. April shipments of 768,000 pounds, or 90 percent of capacity, were the largest to date.

The equipment includes four 10,000-pound reheat furnaces and thirty-two 600-pound holding furnaces. Sand is distributed by overhead band conveyors and there is excellent sand reclamation equipment. A well-planned production line carries the work from core making to assembly of molds and on to pouring, knock-out, trimming, heat treating, inspection, and shipment without any delays or bottlenecks.

This plant is well adapted to manufacture of any type of sand casting up to 1,000 pounds finished weight.

Negotiations are now in progress for sale to lessee.

Plancor 1989, National Bronze & Aluminum Co., Cleveland, Ohio

COSTS	
Land and improvements.....	\$40,000
Buildings.....	484,000
Machinery and equipment.....	1,052,000
Tools and automotive.....	10,000
Total.....	1,576,000

This plant consists of two plants. Plant No. 1 is owned by the lessee but contains approximately \$400,000 worth of DPC equipment. It has a rated annual capacity of 7,200,000 pounds of light castings. Plant 2 is entirely owned by DPC except for a few items of equipment belonging to the lessee. The DPC investment in it is \$1,700,000 and the rated capacity is 24,000,000 pounds. It was constructed to handle any size of castings up to the heaviest. However, due to imperfect designing, that portion of the plant destined to cast the very large items has not been put into operation.

The No. 2 plant contains two reverberatory remelt furnaces and twelve 1,000-pound melting furnaces. April shipments from the two plants were slightly in excess of 1 million pounds or about 40 percent of capacity.

Cylinder Heads

DPC has built eight plants for the production of cylinder heads for air-cooled internal combustion aircraft engines with a total annual capacity of 200,000,000 pounds. Four of these are independent plants and four are part of large aircraft engine plants but are capable of operation apart from the engine plants.

Plant 1214, Aluminum Co. of America, Kansas City, Mo.

COSTS

Land and improvements.....	\$650,137
Buildings.....	2,116,452
Machinery and equipment.....	2,067,397
Tools and automotive.....	11,943
Total.....	5,854,929

This plant has a rated capacity of 1,200,000 cylinder heads a year, total weight of which would be 42 million pounds. There are four 30,000-pound open hearth double remelt furnaces with an ingot casting capacity of 100 million. Pouring is done from forty-eight 1,000-pound tilting furnaces.

Ingot production has been considerably in excess of the plant's requirements and in March 1,275,000 pounds were shipped to Wright Aeronautical Corp. of Lockland, Ohio. Maximum production of cylinder heads was 1,000,000 in March, or about 83 percent of capacity.

There is an excellent sand-reconditioning system. Work is transported throughout by an efficient conveyor system, manpower utilization is excellent, and metal pouring is unusually speedy and efficient. Rejections are small and production costs are believed to be only slightly over \$1 per pound.

The plant is now closed.

Plant 954, Ford Motor Co., Dearborn, Mich.

COSTS

Land and improvements.....	\$22,107
Buildings.....	4,332,244
Machinery and equipment.....	2,464,606
Tools and automotive.....	22,544
Total.....	7,849,501

This plant has a designed capacity of 1,020,000 cylinder heads a year weighing 30,100,000 pounds. Maximum shipments were 1,052,000 pounds in February 1944 equal to about 42 percent of capacity.

There are eighteen 2,000-pound melt and eighteen 1,000-pound holding furnaces, together with much highly specialized equipment. There are no ingot casting facilities except five 2,000-pound scrap remelt furnaces.

Production ceased in June 1944 and the lease was terminated July 20, 1944. A portion of the plant is being used for secret Army aircraft work.

Plant 504, General Motors-Buick, Flint, Mich.

COSTS

Land and improvements.....	\$122, 574
Buildings.....	4, 572, 100
Machinery and equipment.....	4, 538, 710
Tools and automotive.....	51, 000

Total..... 9, 083, 384

This plant was designed to produce cylinder heads for Pratt & Whitney and Wright engines and blocks for Rolls-Royce engines.

Designed capacity is 1,500,000 cylinder heads per annum weighing 43,300,000 pounds and about 72,000 blocks weighing 2,000,000 pounds. Maximum shipments were made in March of 1944 of 3,015,000 pounds, or about 77 percent of capacity.

There is a sand reclamation system.

Plant 897, National Aluminum Cylinderhead Co., Cleveland, Ohio

COSTS

Land and improvements.....	\$131, 000
Buildings.....	2, 401, 000
Machinery and equipment.....	1, 727, 000
Tools and automotive.....	33, 000

Total..... 4, 289, 000

Lessee of this plant is a subsidiary of National Bronze and Aluminum Company who operate Plant 1995, a general aluminum foundry mentioned above.

Rated capacity is 480,000 cylinder heads a year weighing 14,400,000 pounds. Peak production occurred in March 1944 with shipments of 1,150,000 pounds, about 95 percent of capacity.

There are two 20,000-pound remelt furnaces and twelve 2,000-pound pouring furnaces.

Plant 792, Chrysler-Dodge, Chicago, Ill.

APPROXIMATE COST

Building.....	\$5, 975, 000
Equipment.....	2, 505, 000

Total..... 8, 480, 000

This plant is a part of a large aircraft engine plant which cost \$100,000,000. However, the foundry is detached from the other facilities and can be operated independently.

Annual capacity is 600,000 cylinder heads weighing approximately 24,000,000 pounds. Maximum shipments of 2,000,000 pounds were made in October 1944 at which time operations were at capacity. Most recent figure was 1,577,000 pounds, or 79 percent in April. Production has been in excess of the needs of the engine plant and the surplus has been shipped to Wright Aeronautical. Equipment

includes three 25,000-pound reheat furnaces and eighteen 3,000-pound pouring furnaces. The elaborate sand reclamation equipment permits the reuse of over 95 percent. The three production lines move swiftly and smoothly.

Plancor #10, Wright Aeronautical Corp., Lockland, Ohio

APPROXIMATE COSTS

<i>Aluminum Foundry No. 1</i>		<i>Aluminum Foundry No. 2</i>	
Building.....	\$1, 192, 000	Building.....	\$2, 234, 000
Equipment.....	1, 000, 000	Equipment.....	2, 000, 000
Total.....	2, 192, 000	Total.....	4, 234, 000

This aircraft engine plant, constructed at a cost of \$116,000,000 contains two aluminum foundries for the production of air-cooled cylinder heads.

Plant No. 1 has two 25,000 and one 25,000 reheat furnaces. Pouring capacity is 42 million pounds a year of alloy from eighteen 1,000-pound tilting furnaces. Casting capacity is 420,000 cylinder heads per annum.

Plant No. 2 has three 20,000-pound reheat furnaces and twenty-four 3,000-pound tilting furnaces capable of pouring approximately 22,000,000 pounds a year. 900,000 cylinder heads a year can be produced.

Both plants have sand reclamation systems although additional sand storage and handling facilities are needed. They have been very well maintained throughout the period of operations.

Permanent Mold Castings

Plancor 1400A, Reynolds Metals Co., Springfield, Mass.

APPROXIMATE COMMITMENT, JUNE 30, 1944

Land and improvements.....	\$34, 126
Buildings.....	1, 610, 349
Machinery and equipment.....	1, 335, 511
Tools and automotive.....	35, 151
Total.....	3, 015, 137

This plant was originally constructed for a magnesium and foundry and was leased to Springfield Bronze & Aluminum Co. Production began in October 1942 and continued until March 1944, during which month about 60,000 pounds of castings were produced.

The plant was shut down in June 1944 and the lease agreement canceled. Subsequently it was leased to Reynolds Metals Co. for conversion into an aluminum permanent mold plant and \$700,000 was appropriated for this purpose. During the conversion period a certain amount of aluminum sand casting was done. April production totalled 3,000 pounds of permanent mold and 34,000 pounds of sand castings were made.

Conversion is expected to be substantially complete by the end of August at which time capacity will be approximately 6 million pounds a year.

The DPC owns six aluminum rivet plants. One of these is the Husk Manufacturing Co. in Detroit, Mich., with an annual rated capacity of 800,000 pounds of rivets. The plant cost approximately \$300,000. The other facilities are in accordance with various aircraft plants.

There are also four aluminum powder plants, two of which were built for the Navy.

Extrusion Plants

Extruded shapes are produced by forcing hot, but not molten metal, through a die in which there is an opening corresponding in shape to the desired cross section of the product. Intricate shapes can thus be produced which could not be fabricated in any other manner.

The capacity of aluminum extrusion presses is commonly designated by the tons of pressure exerted upon the metal and range from about 200 tons to 5,500 tons. The largest size is capable of producing, exceptionally, extrusions up to 15 inches in cross section, although 12 inches is generally regarded as the normal maximum.

Among the many uses of aluminum extrusions will be found automobile moldings, special sections for aircraft construction, stair-tread strips, nosings for steps and curbs, window frames, angles, T's, channels, and beams. In addition, extrusion may be an intermediate process in the manufacture of tubing, forgings, wire, screws, nails, and rivets.

The total annual capacity of Government-owned extrusion plants is approximately 231 million pounds, which represents about 45.7 percent of the total installed capacity.

It is generally expected that there will be a considerable increase in the postwar use of aluminum extrusions over the prewar period, especially for decorative purposes in buildings and passenger vehicles.

Plant 773-2, Aluminum Co. of America, Phoenix, Arizona

COSTS	
Land and improvements.....	\$516,550
Buildings.....	16,502,858
Machinery and equipment.....	16,415,400
Tools and automotive.....	26,417
Total.....	33,461,225

Next to the Aluminum Co. of America plant in Lafayette, this is the largest aluminum extrusion plant in America. It has an annual capacity of 32,900,000 pounds of shapes and 27,800,000 pounds of tube blooms. The tubing plant can draw 15,500,000 pounds of tubing a year. Production began in May of 1943.

The remelt room contains 5 double hearth and 4 single hearth furnaces. There are eighteen presses—1 of 4,250 tons, 2 of 4,000 tons, 13 of 2,500 tons and 2 of 1,600 tons. Tube-manufacturing equipment includes three 100,000-pound draw benches, seven 50,000-pound, twenty-eight 20,000-pound, and twenty 7,000-pound. The plant is very well equipped with all necessary auxiliary facilities including elaborate die-making machinery.

A 4,250-ton and a 4,000-ton extrusion press have recently been brought from Coosona to be installed here, and three small presses were removed and placed in storage. These changes should provide a net increase in capacity of about 8 million pounds a year.

Plant 773-1, Aluminum Co. of America, Coosona, Pa.

COSTS	
Land and improvements.....	\$728,015
Buildings.....	10,573,142
Machinery and equipment.....	12,912,350
Tools and automotive.....	25,661
Total.....	25,237,177

This plant was constructed for an annual rated capacity of 29,500,000 shapes, 26,200,000 tube blooms, and 14,700,000 tubing. It operated from April 1943 to October 1944, when it was placed in stand-by condition. Subsequently two of the largest presses were removed to 773-2 (Phoenix, Ariz.), and the plant was leased for an aircraft rehabilitation center.

Much of the equipment is still in place, including four double and five single hearth remelt furnaces, thirteen 2,500-ton and two 1,600-ton extrusion presses and 56 tube draw benches from 100,000 pounds to 7,000 pounds in size.

Inquiries have been received from companies interested in acquiring the land and buildings.

Plancor 324, Bohn Aluminum and Brass Corp., Adrian, Mich.

COSTS

Land and improvements.....	\$121, 719
Buildings.....	6, 610, 790
Machinery and equipment.....	9, 550, 001
Tools and automotive.....	44, 047
Total.....	16, 326, 647

This plant has an annual rated capacity of 36 million pounds of shapes. The billet casting facilities include four 10,000-pound reverberatory melting furnaces, and an additional 25,000-pound one is in process of being installed. There are 14 extrusion presses of the following sizes: One 5,500 tons, three 3,550 tons, four 2,750 tons, three 2,400 tons, one 2,200 tons, and two 1,650 tons.

There is ample auxiliary equipment, including preheating and heat-treating furnaces, draw benches, straighteners, stretchers, pickling and quenching tanks, and an adequate die shop.

The lessee has indicated an interest in ultimate acquisition.

Plancor 336, Bohn Aluminum & Brass Corp., Los Angeles, Calif.

COSTS

Land and improvements.....	\$27, 432
Buildings.....	3, 759, 288
Machinery and equipment.....	4, 344, 316
Tools and automotive.....	18, 090
Total.....	8, 149, 126

This plant is similar to but considerably smaller than Plancor 324, having a total capacity of 11,700,000 pounds per annum, consisting of 6,000,000 pounds of shapes, 1,200,000 pounds of tube blooms, and 900,000 pounds of rod and bar. The remelting facilities consist of two 25,000-pound reverberatory furnaces. There are five presses of 3,850, 2,750, 2,400, 2,200, and 1,600 tons, together with stretchers, straighteners, draw benches, tanks, etc.

The lessee has advised that he intends to acquire the plant.

Plancor 3380 (formerly Plancor 379), Extruded Metals, Inc., Grand Rapids, Mich.

COSTS

Land and improvements.....	\$22, 459
Buildings.....	2, 793, 305
Machinery and equipment.....	3, 948, 401
Tools and automotive.....	5, 516
Total.....	6, 774, 683

This plant was first leased to Extruded Metals for the production of aluminum billets and brass billets, rods and bars. The lease was subsequently cancelled and the plant converted to the production of extrusion billets and the extrusion of aluminum rods and bars. A management agreement has been entered into with the former lessee.

It has five 18,000-pound reverberatory remelt furnaces capable of casting 24,000,000 pounds of billets annually. There are one 3,385-ton press, one 2,750-ton press, two 2,400-ton presses, and one 1,650-ton press, having a total extruding capacity of about 10,800,000 pounds a year of rods, bars and shapes.

The lessee has advised DPC that he wishes to acquire the property.

Plancor 1778, Evers Copper & Brass, Inc., Haleshorpe, Md.

COSTS

Land and improvements.....	\$98,422
Buildings.....	3,234,816
Machinery and equipment.....	3,951,937
Tools and automotive.....	3,461

Total..... 7,288,636

This plant, operated under a management contract, produces aluminum and magnesium extruded shapes. Forging equipment has been installed but is not yet in operation.

Aluminum casting facilities comprise three 27,000-pound remelt furnaces designed to cast about 20,000,000 pounds of billets annually. There are six 4,000-pound magnesium remelt furnaces with an annual capacity of about 14,000,000 pounds of billets. The extrusion presses, capable of handling either aluminum or magnesium billets, consist of one 4,400-ton press and one 500-ton press. Extrusion capacity is estimated at 16,000,000 pounds per annum. Forging equipment includes a 3,000-ton and a 1,500-ton hydro press which can turn out 1,800,000 pounds a year. Adequate equipment for scalping preheating, heat treating, pickling, straightening and finishing is installed. There is an excellent die and machine shop.

The plant is modern and efficient and should be of interest to the lessee for post-war operation.

Plancor 47, Reynolds Metals Co., Louisville, Ky.

COSTS

Land and improvements.....	\$48,005
Buildings.....	1,158,763
Machinery and equipment.....	3,697,666
Tools and automotive.....	8,421

Total..... 4,912,855

The remelt room in this plant contains ten 45,000-pound reverberatory furnaces having an estimated annual capacity of 120 million pounds of billets.

Extrusion equipment consists of three horizontal presses of 3,850 tons, 3,300 tons and 500 tons capacity and four vertical presses of 5,000, 3,000, 2,500, and 1,100 tons. Capacity of these presses is estimated at 45,500,000 pounds annually, of which approximately 34,000,000 pounds represent rod and bar, 7,300,000 pounds shapes, and 4,300,000 pounds tube blooms. Tube drawing equipment for tubing up to about 8 inches is installed with an annual capacity of 2,400,000 pounds a year.

Forging Plants

Aluminum forgings are made from strong alloys by steam or air hammer, board drop hammers, or presses. Since the alloys used are somewhat harder than ordinary steel, a 25 percent heavier hammer must be used than would be required to produce a steel forging of equal size. Forging stock is prepared by extrusion or rolling.

Because great strength is required, most forgings are heat treated and aged. Prewar use of aluminum forgings was small in tonnage, being confined largely to automobile connecting rods, pistons, and fixtures, airplane crankcases, cylinder heads, propellers, and nose pieces, locomotive side rods and bars, cross member for street cars, trucks, spray guns, horseshoes, etc. The great increase in aircraft manufacturing brought about by the war required a large expansion in forging facilities which was financed chiefly by DPC. About 59.4 percent of heavy hammer¹ and 40 percent of light hammer and pressing facilities are Government owned.

Plant No. 1148-1, Aluminum Co. of America, New Castle, Pa.

COSTS	
Land and improvements.....	\$733, 896
Buildings.....	3, 198, 476
Machinery and equipment.....	4, 805, 546
Tools and automotive.....	7, 915
Total.....	8, 745, 833

This plant is equipped with 27 forging presses ranging from 700 to 2,500 tons and capable of producing forgings up to 14 pounds in weight. Annual rated capacity of the plant is 21 million pounds. Production during April, consisting mainly of shell fuses and small aircraft parts, was at about 60 percent of capacity and represents the maximum to date.

Plant No. 1148-11, Aluminum Co. of America, Conansburg, Pa.

COSTS	
Land and improvements.....	\$900, 000
Buildings.....	12, 598, 870
Machinery and equipment.....	12, 639, 912
Tools and automotive.....	7, 743
Total.....	26, 146, 525

The annual capacity of this plant is 66,480,000 pounds of heavy forgings and 8,400,000 pounds of small forgings. Thirty million pounds of the large hammer capacity is allocated to propeller production. The forging equipment consists of four 35,000 pound hammers, four of 35,000 pounds, eight of 20,000 pounds, one of 16,000 pounds, four of 12,000 pounds, 12 light hammers ranging from 1,500 to 8,000 pounds, two forging presses of 1,500 and 2,000 tons each, and two 7½-ton upsetters. The 35,000-pound hammers are capable of producing the largest hammer forgings made in America.

April production consisted of 257,000 pounds of propellers, 233,000 pounds of crank cases, and 121,000 pounds of miscellaneous large and small forgings and

¹ Hammers are described by the weight of the portion making the impact. Those of 16,000 pounds and over are classed as heavy hammers and are used to produce propellers and crank cases; small hammers, under 16,000 pounds, for smaller articles.

pressings which were only about 10 percent of the plant capacity. It has never operated at as high as 25 percent capacity. The plant is now closed.

The townspeople have shown great interest in assisting in the disposal of the plant and a committee has been formed to interest manufacturing concerns in multiple tenancy occupancy. The RFC is actively cooperating.

Plancor 1877, Aluminum Co. of America, Monroe, Mich.

COSTS	
Land and improvements.....	\$2,428,968
Buildings.....	4,952,961
Machinery and equipment.....	5,937,968
Tools and automotive.....	128,075
Total.....	13,448,970

This cylinder head plant contains six 27,000-pound reverberatory remelt furnaces and scalpers capable of producing 120 million pounds a year of scalped ingots. Half of this amount can be manufactured into forged cylinder heads in the plant. Annual cylinder head capacity is 672,000 units weighing approximately 85 pounds each.

The plant was originally designed for three production lines, but only two have been installed. Each line consists of two 2,500-ton and one 1,500-ton forging presses and one 8-inch upsetter, together with the necessary auxiliary equipment, including a well-equipped die shop.

It is very highly mechanized and would undoubtedly be a very cheap producer when operating near capacity.

April production was 2,100,000 pounds, or about 60 percent of capacity. This is the highest rate yet achieved.

Plancor 1895 Aluminum Forgings, Inc., Erie, Pa.

COSTS	
Land and improvements.....	\$333,077
Buildings.....	4,430,382
Machinery and equipment.....	4,675,502
Tools and automotive.....	45,750
Total.....	9,484,711

This plant is operated under a management agreement. It has six large hammer forges: two of 20,000; two of 16,000; and two of 12,000 pounds; 21 small hammers of 750 pounds to 8,000 pounds, and five forging presses of from 750 tons to 2,500 tons. Large hammer forging rated capacity is 11,520,000 pounds a year and small hammer and presses 4,080,000 pounds. Recent monthly shipment figures indicate that the plant is operating at approximately capacity for small forgings and pressings, but at less than 20 percent on large forgings.

The operator has done considerable experimentation in magnesium forgings with good technical results.

Besides usual preheating, heat treating, ageing, cleaning, and finishing facilities, the plant is supplied with extensive die-making equipment.

It is understood that the present operator is interested in leasing the plant after the war.

Plancor 1643 General Motors-Chevrolet, Anderson, Ind.

COSTS	
Land and improvements.....	
Buildings.....	\$982,000
Machinery and equipment.....	3,180,000
Tools and automotive.....	83,000
Total.....	4,195,000

This forged cylinder head plant was planned for three production lines but later reduced to two. Each contains two 4,000-ton, one 2,000-ton forging presses and an 8-inch upsetter. Present total capacity is 600,000 units of 62½ pounds each, or \$7,500,000 pounds per annum. Peak production took place in March 1945 with shipments of 1,075,000 pounds, or about 35 percent of capacity.

Installed in the plant are several million dollars of special purpose machine tools from Plancor 155 which are used for machining the heads. There is no equipment for scalping or cutting ingots into forging stock and there is no die shop. The buildings are very old and have been repaired only to a minimum extent.

The lessee has indicated an interest in the plant.

Plancor 448 General Motors-Chevrolet, Saginaw, Mich.

COSTS	
Land and improvements.....	\$17,538
Buildings.....	2,310,936
Machinery and equipment.....	6,508,164
Tools and automotive.....	
Total.....	8,836,638

This modern, well-equipped forging plant is the second largest plant of its kind in the country with an annual rated capacity of 113,040,000 pounds. It has twelve large hammers, four of 35,000 pounds, four of 20,000 pounds, two of 16,000 pounds, and two of 12,000 pounds, capable of producing 60,120,000 pounds of large forgings. Chief items manufactured are propellers and crankcases. Peak shipments occurred in April of 1944 with 3,265,000 pounds of propellers, 1,196,000 pounds of crankcases, and 218,000 pounds of miscellaneous heavy forgings, representing about 80 percent of capacity. April 1945 shipments totaled 2,004,000 pounds, or about 36 percent capacity.

Equipment for producing light forgings and pressings include two 8,000-pound, one 3,500-pound, and one 1,500-pound hammers; one 3,000-ton, one 1,500-ton, one 1,200-ton, one 750-ton, one 600-ton, and one 200-ton forging presses, and two 8-inch and two 7½-inch upsetters. Their annual capacity totals 43,930,000 pounds consisting mostly of cylinder barrel muffs and pistons. Largest shipments were in April 1945 with a total of 2,316,000 pounds equal to 63 percent of capacity.

Plancor 8083 Reynolds Metals Co., Louisville, Ky.

COSTS	
Land and improvements.....	\$433,978
Buildings.....	1,487,633
Machinery and equipment.....	821,430
Tools and automotive.....	17,922
Total.....	2,760,963

This plant is designed to manufacture light forge pressings and to cut and form light sheet metal products. For this purpose there are 13 presses ranging from 1,000 tons to 250 tons; other minor metal forming equipment, together with heat-treating, annealing, ageing, dipping, and finishing facilities. Rated capacity is 2,400,000 pounds a year. Maximum monthly shipments amounted to 56,000 pounds in April, or 28 percent of capacity. The building is large, modern, and well-constructed.

Provisions of Lease Agreements Affecting Disposal of Government-owned Plants

Term of lease.—In general leases provide for a term of 5 years from the date of the commencement of production with, in some cases, an automatic renewal for an additional 2 years. Exceptionally Plancor 1395 (Aluminum Forgings, Inc.) and Plancor 1778 (Revere Copper & Brass, Inc.) are for a 10-year term with no renewal. However, all leases may be terminated by either party upon 90 days or less notice at any time when substantial use of the facilities by lessee are no longer required for war production.

Option to purchase.—Option to purchase, valid for a period of 90 days after termination of lease, at cost plus 4 percent interest; less rentals, plus 4 percent interest; or cost less depreciation with a minimum residual value of 15 percent, whichever is the higher, have been granted to the following lessees on the plancors indicated:

- 1643, General Motors-Chevrolet, Anderson, Ind.
- 446, General Motors-Chevrolet, Saginaw, Mich.
- 2023, Reynolds Metals Co., Louisville, Ky.
- 47, Reynolds Metals Co., Louisville, Ky.
- 65, Reynolds Alloys Co., Listerhill, Ala.
- 1208, General Motors-Deico Remy, Bedford, Ind.
- 1989, National Bronze & Aluminum Co., Cleveland, Ohio.
- 504, General Motors-Buick, Flint, Mich.
- 178, Huck Manufacturing Co., Detroit, Mich.
- 1973, National Smelting Co., Cleveland, Ohio.

In addition, the right of first refusal valid for varying periods not exceeding one year from termination of the lease have been accorded the above-mentioned lessees and also to the following:

- 1395, Aluminum Forgings, Inc., Erie, Pa.
- 324, Bohn Aluminum & Brass Corp., Adrian, Mich.
- 326, Bohn Aluminum & Brass Corp., Los Angeles, Calif.
- 1778, Revere Copper & Brass, Inc., Halethorpe, Md.
- 2151, McAlear Mfg. Co., Rochester, Mich.

Appendix 2

PRODUCTION OF ALUMINUM, COPPER, AND STEEL IN THE UNITED STATES, SPECIFIED YEARS, 1920-1944

(In short tons)

Year	Primary aluminum	Refined primary copper	Steel	Year	Primary aluminum	Refined primary copper	Steel
1920	69,021	1,763,083	47,198,396	1939	163,845	970,539	82,796,711
1921	70,099	1,197,091	50,940,747	1940	204,280	1,267,539	94,962,080
1922	114,518	1,087,611	45,882,421	1941	309,067	1,377,681	82,239,280
1923	89,277	870,947	38,183,705	1942	421,106	1,430,769	94,081,921
1924	112,484	963,064	38,489,989	1943	939,179	1,410,068	88,890,823
1927	146,240	1,090,467	54,630,945	1944	1,776,446	1,371,187	89,641,680
1928	189,441	913,823	31,791,990				

1 Bureau of Mines.

Source: *Metal Statistics*, American Metal Market, New York, N. Y., 1939 and 1945.

Appendix 3

PREWAR CONSUMPTION OF ALUMINUM BY INDUSTRIES,
UNITED STATES, 1935-39 AVERAGE

Industry	Sales	
	Million pounds	Percent
Total	257	100.0
Transportation	57	22.2
Automobile	25	9.7
Air	23	8.9
Rail	8	3.1
Other	1	0.4
Metal and metal products, nonferrous	41	15.9
Electric light and power companies	25	9.7
Cooking utensils	31	12.0
Electrical machinery, apparatus, appliances	26	10.1
Iron and steel and their products, except machinery	22	8.6
Blast furnaces, steel works, rolling mills	10	3.9
Architectural, structural, ornamental	8	3.1
Other	4	1.6
Machinery, except transportation	9	3.5
Air-conditioning, refrigeration, etc.	2	0.8
Business machines	1	0.4
Engines, gas, Diesel, steam	1	0.4
Other	5	1.9
Chemical and allied products	7	2.7
Paints and varnishes	3	1.2
Sales to metal jobbers	15	5.8
Miscellaneous industries	14	5.5

Source: Engle, Gregory, and Moss, *Aluminum* (1944) p. 252.

Appendix 4

ESTIMATED EMPLOYMENT IN THE U. S. ALUMINUM
INDUSTRY, 1939 AND 1944

	1939 ¹	1944 ²
Bauxite mining.....	800	2,000
Alumina plants.....	300	7,000
Reduction plants.....	2,000	15,000
Fabricating plants and secondary smelters.....	Over 20,000	125,000
Total.....	Over 23,000	149,000

¹ Estimated by Engle, Gregory, and Moss, *Aluminum* (1944), pp. 100-108.

² Estimated by the War Production Board.

Appendix B WORLD PRODUCTION OF ALUMINUM¹

1935-39 average and 1939 to 1944, inclusive

(In metric tons)

Country	1935-39 Average	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954
1935-39																	
Western Hemisphere:																	
United States.....	15,000	17,000	15,000	15,000	14,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
Canada.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total.....	25,000	27,000	25,000	25,000	24,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000	22,000
Europe:																	
Germany.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
France.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
United Kingdom.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Italy.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Netherlands.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Sweden.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Switzerland.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Belgium.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Denmark.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total.....	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Asia:																	
Japan.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total.....	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total world.....	35,000	37,000	35,000	35,000	34,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000

¹ Figures for the United States, Canada, and British Isles are actual; all others from 1939 through 1944 are estimates based on information from Government agencies, private industry and representatives of foreign countries.

Source: War Production Board, The Special Aluminum Committee, The World Aluminum Industry, April 1945, p. 2.

Appendix 6 **WORLD PRIMARY ALUMINUM CAPACITY, 1944 AND PRODUCTION, 1935**

[Metric tons]

Zone and country	1944				1935	
	Installed capacity	Percent of total	Percent owned by Government	Percent owned or controlled by foreign companies	Production	Percent of total
ZONE 1						
Western Hemisphere.....	1,500,000	61.7			75,500	29.1
United States.....	1,070,000	41.6	86.6		54,100	20.9
Canada.....	310,400	19.5			21,400	8.2
Brazil.....	5,000	.3				
ZONE 2						
Europe.....	205,700	27.6			154,300	59.5
Austria.....	105,000	4.1	100.0	9.5	2,500	1.0
British Isles.....	85,400	2.3	19.9	9.8	15,100	5.8
France.....	113,800	4.4			22,000	8.5
Germany.....	281,000	9.7	67.3	14.3	70,800	27.8
Hungary.....	15,300	.7			300	.1
Italy.....	64,000	2.5		50.7	12,800	4.9
Norway.....	26,700	1.4		100.0	15,000	5.8
Rumania.....	1,300					
Spain.....	17,000	.7		41.3	1,200	.5
Sweden.....	4,700	.2		100.0	1,500	.7
Switzerland.....	37,700	1.5			11,700	4.5
Yugoslavia.....	5,000	.2				
ZONE 3						
Africa.....						
ZONE 4						
U. S. S. R.....	75,000	2.9	100.0		35,500	9.8
ZONE 5						
Far East.....	301,000	7.6			4,200	1.6
China.....						
India.....	5,000	.2		62.5		
Japanese Empire and mandates.....	100,000	7.5	100.0		4,200	1.6
Total.....	2,572,000	100.0			230,400	100.0

1 Owned by German Government.

Sources: War Production Board, The Special Aluminum Committee, The World Aluminum Industry, April 1945, p. 2.

Appendix 7

ALCOA'S COST OF PRODUCING ALUMINA, 1926-37

Explanation

This table compares the costs of producing alumina at East St. Louis as computed by two methods. The results are in very close agreement with the exception of the first 3 years, 1926-28. In the antitrust case, *U. S. A. v. Alcoa, et al.*, the data from which this table was prepared were submitted in response to a number of different interrogatories but without any synthesis directed toward determining the cost of producing alumina. It was therefore necessary to assemble all data bearing on the subject and to make a number of computations and comparisons.

Cost computation 1.—By this method the gross cost of ore per pound of pig aluminum is shown in column 16. From this is deducted an item called "ore differential" (column 17) and an item called "profits of direct subsidiaries" (column 18). The ore differential apparently has no relation to profits of any other subsidiaries but seems to represent the difference between the price for alumina charged to the aluminum plants and an accounting entry on the books of those plants. The profits of direct subsidiaries apply to bauxite, alumina, aluminum hydrate, aluminum fluoride, cryolite, and some miscellaneous items. Separate profits on each item were not shown in the replies to the interrogatories, but no significant error is introduced by assuming that these profits apply only to alumina and bauxite because the values of these two products annually exceeded by much more than 10 to 1 the values of the other products. Profits of the Ocean Dominion Steamship Corp. and Alcoa's railroad subsidiaries were not deducted in the replies to the interrogatories and evidently do not appear anywhere as a deduction from the costs of producing pig aluminum. The net cost of ore per pound of aluminum produced is converted into cost per pound of alumina used, by dividing by the number of pounds of alumina required per pound of aluminum (column 20). The cost per ton of alumina is then shown in column 21 and freight is deducted, as computed in columns 8 to 13, to arrive at net cost per ton in column 22. The transportation cost deducted represents average freight from the alumina plant at East St. Louis to the four aluminum plants of Alcoa.

Cost computation 2.—This method employs totals instead of figures converted to a basis per pound of aluminum. The amount of alumina supplied to the aluminum plants and the valuations at which sold, exclusive of transportation costs, are given in columns 23 and 24. Total profits are shown in column 25, and the next three columns present conversions made on the basis per ton of alumina. The results compare closely with the results of the other method in all years except 1926-28. For these years, the discrepancies cannot be explained from information available, but they are of no importance because of the substantial agreement found in the more recent and significant years.

Columns 1 to 15 show background information necessary for preparing or interpreting the two sets of computations. Two groups of figures were available on the valuations of alumina, the amount actually consumed in producing aluminum and the amount supplied to the aluminum plants. The difference between these sets of data would presumably lie in inventories.

Taking the costs shown for the years 1929 to 1937, there appears a general inverse relation between percentage of capacity utilized and costs per ton. The

relationship is not exact. In 1929 when production was at 86 percent of capacity, cost was little more than \$35; in 1937, when production was at 96 percent of capacity, cost was somewhat over \$39. Regardless of variation in costs per ton as related to capacity, there is evident a downward trend in costs per ton. This would naturally follow the adoption of economies during the depression. It therefore seems to be entirely reasonable to assume from the costs of 1936 and 1937 when output was 72 percent and 96 percent of capacity with costs below \$30 in each year, that figure is a ceiling for prewar costs of production at East St. Louis.

Alcoa's cost of producing alumina, 1929-37

Year	Pounds of virgin pig aluminum produced ¹	Pounds of alumina produced ¹	Alumina plant capacity ¹	Production as percent of capacity	Consumption of alumina in production of aluminum ¹		
					Pounds	Dollars	Value per ton
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1929	147,388,000	448,128,074	474,000,000	94	392,388,418	\$ 714,778.00	\$61.00
1930	162,000,000	497,388,407	511,000,000	97	510,169,388	\$ 788,985.00	\$8.47
1931	200,544,000	575,646,589	554,000,000	100	497,454,168	\$8,327,338.00	\$8.73
1932	227,972,000	693,547,081	590,000,000	95	438,122,487	\$8,814,212.47	\$7.60
1933	238,000,000	611,000,171	590,000,000	95	444,990,211	\$8,446,978.00	\$7.81
1934	177,544,000	482,979,117	590,000,000	85	336,979,094	\$ 686,712.18	\$7.60
1935	194,000,000	598,141,397	590,000,000	98	588,786,001	\$ 788,985.00	\$7.70
1936	85,128,177	179,644,085	590,000,000	30	162,189,000	\$ 396,064.00	\$7.73
1937	74,127,081	187,736,784	590,000,000	26	137,703,287	\$ 388,881.81	\$7.80
1938	119,200,000	307,041,740	600,000,000	64	314,468,784	\$ 1,000,737.24	\$7.77
1939	204,000,000	604,416,000	600,000,000	73	431,434,079	\$8,004,788.73	\$7.66
1940	200,000,000	604,000,277	600,000,000	96	548,300,017	\$8,986,560.00	\$7.30
Total and average	1,907,180,814	5,302,182,790			1,907,087,718	\$7,006,214.40	\$8.81

Year	Alumina supplied to Alcoa's aluminum plants						Alumina used per pound of aluminum ²	
	Pounds ³	Dollars ³	Transportation cost ⁴	Total cost to Alcoa's plants	Cost per ton	Transportation per ton	Pounds	Cost (\$)+Cost X(14)
	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1929	384,907,700	\$8,802,000.07	\$708,977.42	\$11,309,004.49	\$29.42	\$4.46	1.917	\$4.81
1930	460,542,084	\$11,144,000.10	\$10,000.00	\$11,044,000.10	\$24.79	\$4.79	1.900	\$4.80
1931	444,882,180	\$9,380,212.00	1,071,514.77	\$10,451,726.77	\$23.48	\$4.81	1.900	\$4.81
1932	441,000,100	\$9,274,514.10	1,120,000.41	\$10,394,514.51	\$23.57	\$4.84	1.900	\$4.82
1933	444,882,180	\$9,380,212.00	1,380,000.00	\$10,760,212.00	\$24.19	\$4.84	1.915	\$4.85
1934	200,000,000	\$4,400,000.00	\$44,000.00	\$4,444,000.00	\$22.22	\$4.80	1.904	\$4.79
1935	186,000,000	\$4,182,000.00	\$86,100.00	\$4,268,100.00	\$22.71	\$4.71	1.904	\$4.79
1936	180,777,000	\$3,884,794.00	\$85,100.00	\$3,969,894.00	\$22.50	\$4.70	1.900	\$4.70
1937	180,000,000	\$3,570,000.00	\$71,000.00	\$3,641,000.00	\$20.23	\$4.67	1.907	\$4.68
1938	274,000,000	\$6,700,000.00	\$44,000.00	\$6,744,000.00	\$24.61	\$4.73	1.914	\$4.73
1939	419,200,000	\$9,384,000.00	\$1,120,000.11	\$10,504,000.11	\$25.07	\$4.87	1.976	\$4.80
1940	402,000,000	\$11,214,000.00	\$1,470,100.77	\$12,684,100.77	\$31.54	\$4.84	1.977	\$4.84
Total and average	4,214,884,878	\$9,644,302.00	\$10,000,000.00	\$10,654,302.00	\$25.22	\$4.80	1.900	\$4.79

¹ Answer to Interrogatory 102.

² For 1929-37, from answer to Interrogatory 5. For 1938-42, from U. S. Bureau of Mines and Federal Power Commission, *Power Requirements in Electrochemical, Electrochemical and Allied Industries* (1939), p. 28.

³ Interrogatory 94. Figures prior to 1935 include calcined aluminum hydrate.

⁴ Computed from answer to Interrogatory 94 on basis of 260 days per year.

⁵ Answer to Interrogatory 102.

⁶ Answer to Interrogatory 101. Price includes cost of transportation.

⁷ Answer to Interrogatory 102.

⁸ From answer to Interrogatory 104. At 100 percent production efficiency, the ratio of weight of aluminum oxide to aluminum is 1.9134 to 1.0, or 1.90 (Al₂O₃ to Al). However, the amount of alumina used per pound of pig produced is reduced whenever alloys are included in the weight of pig.

Alcoa's cost of producing alumina, 1926-37—Continued

COST COMPUTATION 1

Year	Cost of alumina per pound of aluminum produced ¹				Pounds of alumina per pound of aluminum	Net cost per ton of alumina	
	Gross cost of ore (cents)	Ore differential (cents)	Profits of direct subsidiaries (cents)	Net cost (cents)		With freight	Less freight
	(16)	(17)	(18)	(19)	(20)	(21)	(22)
1926.....	6.69	0.00	1.00	6.69	1.917	\$40.79	\$34.33
1927.....	6.61	1.00	0.00	6.30	1.896	40.30	32.84
1928.....	6.61	.84	.00	6.04	1.886	41.70	30.60
1929.....	6.30	.79	.00	5.90	1.886	41.00	29.40
1930.....	6.37	.81	1.00	6.00	1.906	39.00	31.34
1931.....	6.30	.80	.70	5.60	1.918	40.31	34.75
1932.....	6.30	.79	.44	4.11	1.914	42.04	37.24
1933.....	6.10	.79	.13	4.61	1.900	40.30	30.60
1934.....	6.10	.79	.20	4.10	1.887	40.13	30.30
1935.....	6.00	.74	.00	5.00	1.814	38.40	28.75
1936.....	6.24	.80	1.20	5.14	1.874	38.73	28.30
1937.....	6.30	.83	1.21	5.20	1.877	34.43	28.10
Average.....	6.32	.80	.32	5.84	1.899	40.60	30.30

COST COMPUTATION 2

Year	Alumina supplied on which profits are computed ²		Profits ³	Profit per ton of alumina	Gross cost per ton of alumina	Net cost per ton of alumina
	Pounds	Dollars				
	(23)	(24)	(25)	(26)	(27)	(28)
1926.....	374,394,300	7,880,640.14	25,000,013.00	\$21.33	\$38.00	\$34.00
1927.....	317,131,000	7,300,700.00	1,100,000.00	7.10	40.00	30.00
1928.....	378,970,700	8,200,000.00	1,700,000.00	8.20	40.00	34.00
1929.....	441,000,000	8,370,000.00	1,000,000.00	4.75	42.00	34.00
1930.....	400,000,000	8,610,000.00	2,000,000.00	10.00	41.00	31.00
1931.....	300,000,000	8,000,000.00	1,000,000.00	5.00	42.00	37.00
1932.....	110,000,000	4,100,000.00	400,000.00	4.00	42.00	37.00
1933.....	100,772,000	4,300,000.00	110,000.00	1.40	42.00	30.00
1934.....	100,000,000	3,300,000.00	100,000.00	2.00	42.00	30.00
1935.....	300,000,000	4,700,000.00	200,000.00	5.00	42.00	30.00
1936.....	470,000,000	8,000,000.00	1,000,000.00	12.74	42.00	28.26
1937.....	300,000,000	11,000,000.00	2,000,000.00	12.00	42.00	28.00
Average.....	280,000,000	7,000,000.00	1,000,000.00	8.00	42.00	34.00

¹ Answer to interrogatory 351 and exhibit 717.² Answer to interrogatory 352. Excludes freight.³ Profits on bauxite, alumina, aluminum fluoride, cryolite, aluminum hydrate, and miscellaneous materials. From additional reply to interrogatory 353. Profits on bauxite and alumina are assumed here to account for nearly all of the total profits, inasmuch as the values of bauxite and alumina used in intercompany transactions annually exceeded the values of the other products by more than 10 to 1.

Appendix 8

ESTIMATED POSTWAR POWER COSTS, ALUMINUM
REDUCTION PLANTS

The following table shows the probable costs of power for reduction plants that will be in production in the first few years after the war, and the most likely costs to the other plants were they to be kept in operation. The quantities of energy are those that would be required for the corresponding production capacity. For some plants, more than one block of energy is shown in order to indicate the different costs corresponding to the different sources that would supply power to those plants.

The supporting analysis for each plant is given in a report of the Bonneville Power Administration, Department of Interior, "Power Costs, Aluminum Reduction Plants," January 21, 1945. Portions of this report have been confidential under war regulations.

Of the costs shown, those representing purchased power are based on existing prices or possible readjustments in those prices for long-term contracts. Possibilities for short-term rate concessions have been disregarded here, although they might alter at least temporarily the survival prospects of some plants. The costs of Alcoa's generated energy are derived from financial reports of the company or its subsidiaries to the Federal Power Commission in recent years. The Alcoa costs include depreciation and intracompany management service charges on the company's own generated power. Most of these elements of cost could be disregarded by Alcoa in deciding on the economical rank of segments of aluminum reduction capacity at the various plants and in selecting plants or portions of capacity to be shut down in a curtailment program. The cash-outlay costs for power would be the principal determinant of which plants could be operated most economically. Depreciation could be ignored, representing a sunk cost.

Presumably only a portion of the standard service charges to the operating subsidiaries is actually incurred by the parent company each year in the form of expenditures for legal, engineering, and other services. If depreciation and service charges are excluded, Alcoa would probably incur the following low cash outlay costs for its own generated power:

Location of aluminum plants	Postwar energy supply, annual average Alcoa generation (thousands of kw.-h.)	Postwar estimated cost per kw.-h. less depreciation and Alcoa service charges
Alcoa, Tenn.	1,540,000	<i>Mills</i> 1.0
Carolina Aluminum Co., Western Division	653,000	.8
Calderwood Dam	540,000	.9
Nantahala Power & Light dam	347,000	1.4
Badin, N. C.	775,000	.7
Massena, N. Y.	805,000	.7

The foregoing costs should be compared with the costs to other plants shown in the following table. Only one of the following costs could be reduced by ignoring depreciation. At Jones Mills, Ark., the cost would drop from 4 mills to 2.1 mills per kilowatt-hour for plant generated energy.

Plant	Amount of aluminum capacity and related blocks of energy		Probable cost of power (mills per kw. h.)	Source and kind of power
	Capacity ¹ (pounds)	Energy (thousands of kw. h.)		
1. Alcoa, Niagara Falls, N. Y.	43,000,000	373,000	1.5	Purchased—firm.
2. Alcoa, Badin, N. C.	81,000,000	775,000	1.1	Alcoa generated—firm and other.
	30,000,000	250,000	2.0 to 2.0	Purchased, TVA and other sources—firm and other power.
	111,000,000	1,025,000	1.0 to 2.2	
3. Alcoa, Massena, N. Y.	87,000,000	806,000	1.2	Alcoa generated—firm and other.
	107,000,000	900,000	(7) 2.1	Canadian imports—firm.
	194,000,000	1,472,000	1.3	
4. Pacific Northwest plants: Alcoa, Vancouver, Wash.	173,000,000	1,540,000		
Reynolds, Longview, Wash.	52,000,000	505,000		
DPC, Tacoma, Wash.	41,000,000	360,000	2.1	Purchased, BPA—firm.
BPC, Spokane, Wash.	216,000,000	1,944,000		
DPC, Troutdale, Oreg.	341,000,000	1,360,000		
5. Alcoa, Alcoa, Tenn.		90,000	0.9	TVA, Fontana contract—firm.
		1,540,000	1.4	Alcoa generated—firm and other.
		202,000	2.5	TVA—secondary.
		1,814,000	2.3	TVA—firm.
6. DPC, Los Angeles, Calif.	341,000,000	3,212,100	2.2	Purchased—firm.
7. Reynolds, Listerhill, Ala.	175,000,000	1,620,000	2.3	Purchased, TVA—firm.
	100,000,000	900,000	2.5	
8. DPC, Jones Mills, Ark.	75,000,000	711,000	2.0	Plant generated, steam—firm.
	95,000,000	800,000	2.1 to 4.0	Plant generated, diesel—firm.
	141,000,000	1,291,000	2.4 to 2.5	
9. DPC, Riverbank, Calif.	108,000,000	972,000	(7) 4.0	Purchased—firm.
10. New York-GWI plants: DPC, Burlington, N. J.	108,000,000	954,000	over 4.0	Purchased—firm.
DPC, Massena, N. Y.	296,000,000	2,661,000		
DPC, Massena, N. Y.	108,000,000	944,000	(7) 1.75 to 2.1	(7) St. Lawrence project or Canada.

¹ Some capacities differ slightly from those shown in appendix 13a.

² If interest and depreciation and normal taxes and insurance on Federal investment in gas engine plant are included, the cost will be 2.1 mills per kw. h.

TVA: Tennessee Valley Authority.

BPA: Bonneville Power Administration.

Appendix 9

ALCOA PREWAR MILL COSTS OF PRODUCTION OF
PIG ALUMINUM

The following table shows the average prewar mill costs of producing pig aluminum at the four Alcoa reduction plants at Niagara Falls and Massena, New York, Badin, North Carolina, and Alcoa, Tenn. These figures were arranged from data submitted by Alcoa in the antitrust case. Originally, the data included the costs of transportation from the mill to market because Alcoa priced metal on a delivered basis; but these costs have been removed in the table. The mill costs shown exclude general overhead of the Alcoa organization, selling and administration expenses, and other items that do not belong in production costs. Subsidiary profits on raw materials have been eliminated along with differential between standard accounting charges and actual costs of carbon, power, and ore. Profits of shipping and railroad subsidiaries have not been removed.

The table shows that mill costs have averaged less than 10 cents a pound from 1928 to 1937 with the exception of 1934, the year of lowest output. In 1931, producing at two-thirds of capacity, Alcoa had a cost of 8.41 cents per pound. By 1935, producing at less than 50 percent of capacity, Alcoa had a cost of 9.00 cents. In 1936 and 1937 when production was at 85 and 100 percent of capacity, respectively, costs had fallen to 7.85 and 7.75 cents. The records show that at or near full capacity, Alcoa has produced at less than 8 cents, and at near 50 percent capacity, costs have been around 9 cents. If estimated profits on ocean transportation of bauxite are removed, costs would be a sixth to one-fourth cent less per pound. It is not clear whether profits as deducted in the antitrust data were before or after income taxes of subsidiaries. If profits were deducted after income taxes, the net costs would be overstated by the amount of taxes paid.

The total cost of delivered metal, including all administrative charges and freight, would add not more than 2 cents per pound according to other data given in the antitrust case.

Year (in dollars)

1928	1929	1930	1931	1932	1933	1934	1935	1936	1937

Item	Mill cost (in cents)											
	1925	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937
Pot lining.....	0.12	0.10	0.10	0.11	0.11	0.08	0.09	0.08	0.17	0.12	0.09	0.08
Carbon rodding:												
Electrodes.....	1.91	2.07	1.72	1.98	1.84	1.47	1.40	1.40	1.42	1.40	1.37	1.38
Electrode rods.....	.12	.12	.06	.08	.08	.08	.08	.08	.08	.08	.08	.08
Labor.....	.08	.08	.07	.08	.08	.08	.08	.08	.08	.08	.08	.08
Total.....	2.11	2.27	1.84	2.04	1.99	1.63	1.56	1.56	1.58	1.56	1.53	1.54
Less carbon differential.....	.38	.41	.34	.38	.34	.40	.38	.38	.38	.34	.35	.35
Net carbon rodding cost.....	1.73	1.78	1.50	1.66	1.65	1.23	1.18	1.18	1.20	1.22	1.18	1.19
Power.....	2.40	2.19	2.32	2.30	2.24	2.12	2.08	2.08	2.08	2.01	2.12	2.06
Less power differential.....	1.16	1.23	.75	.78	.85	.84	.88	.88	.84	.89	.79	.84
Net power cost.....	2.23	2.06	1.57	1.52	1.39	1.28	1.20	1.20	1.24	1.12	1.34	1.22
Pot rooms:												
Electrolyte.....	.47	.82	.80	.80	.45	.22	.27	.35	.27	.44	.80	.80
Alloys.....	.13	.08	.07	.05	.05	.04	.11	.08	.12	.12	.20	.21
Labor.....	2.08	1.67	1.08	.98	.93	.74	.69	.68	.63	.67	.43	.73
Subtotal.....	2.68	2.57	1.95	1.83	1.43	1.10	.87	.80	1.02	1.23	1.23	1.44
Ore.....	0.00	0.01	0.41	0.28	0.27	0.25	0.25	0.25	0.22	0.00	0.24	0.28
Less:												
Ore differential.....	.80	1.53	.84	.73	.81	.80	.79	.79	.76	.74	.80	.80
Profits of direct subsidiaries ¹	1.98	.69	.02	.65	1.02	.79	.45	.12	.29	.00	1.28	1.21
Net ore cost.....	1.91	4.20	4.04	2.88	2.89	2.85	4.11	4.41	4.29	2.69	2.21	2.28
Total pot room cost.....	0.94	0.57	0.64	0.60	0.65	0.65	0.68	0.70	0.69	0.60	0.60	0.67
Miscellaneous plant expenses.....	.22	.20	.19	.19	.20	.18	.18	.15	.15	.15	.15	.15
Depreciation.....	.27	.28	.21	.19	.19	.28	.40	.40	.32	.28	.14	.12
Plant administration.....	.22	.28	.19	.18	.18	.17	.19	.24	.20	.18	.15	.18
Repairs and maintenance.....	.22	.20	.24	.24	.21	.17	.16	.17	.20	.20	.21	.20
Total mill cost.....	11.88	11.98	9.64	9.21	8.48	8.41	9.04	9.08	10.79	9.00	7.85	7.75
Production capacity, short tons ²	21,000	22,000	200,000	112,000	125,000	121,000	124,000	122,000	120,000	120,000	122,000	144,000
Pig aluminum produced, short tons ³	73,000	81,004	105,272	112,000	114,512	88,772	82,464	42,000	37,000	88,048	112,465	144,500
Percent utilization of capacity.....	80.4	80.6	265.2	100.9	91.6	87.2	89.2	38.2	30.8	43.9	94.6	101.6

¹ Arranged from U. S. A. v. Alcoa, et al. reply to Interrogatory 351 and exhibits 717 and 718. Transportation on consigned aluminum has been eliminated as it is not an item of mill cost.

² Includes profits on bauxite, alumina, aluminum hydrate, aluminum fluoride, cryolite, and miscellaneous materials, according to Interrogatory 354. Profits on power transportation of bauxite were not deducted. Estimated at \$0.50 to \$1.00 per long ton of bauxite, they would reduce the costs of aluminum by about 0.10 to 0.20 cent per pound.

³ Computed from a reply to Interrogatory 4.

⁴ From Bureau of Mines.

Appendix 10:

PRODUCTION OF PRIMARY AND SECONDARY ALUMINUM IN THE UNITED STATES, 1930-44

(In short tons)

Year	Primary metal	Secondary metal			Percent of secondary metal from old scrap	Primary and secondary from old scrap	
		Total ¹	From new scrap	From old scrap		Total	Percent of secondary from old scrap
1930	114,519	26,000					
1931	89,773	26,000					
1932	82,464	26,000					
1933	42,582	26,000					
1934	37,690	26,000					
1935	30,048	26,000					
1936	112,468	51,000					
1937	146,861	64,700					
1938	145,641	26,000					
1939	198,045	26,947					
1940	206,296	26,362	24,500	45,800	87.0	262,098	16.17
1941	200,087	106,087	62,744	43,113	40.2	322,150	12.30
1942	221,490	106,494	184,931	41,083	21.2	382,799	1.80
1943	280,179	212,061	280,000	22,064	10.6	562,223	1.67
1944	776,448	326,048	289,748	22,800	7.0	799,348	2.87

¹ Until 1936, data included plant scrap recycled in the reporting plants. This resulted in inflation of reported figures. Beginning in 1936, plant scrap was excluded. The only inflation left was in scrap transferred between plants and used more than once during the year.

Source: Bureau of Mines, Minerals Yearbook, 1937-43; unpublished data, 1944.

Appendix 11

OWNERSHIP AND CONTROL OF WORLD ALUMINUM INDUSTRY, 1944

(Capacities of primary aluminum in metric tons)

Country and company	Installed capacity	Remarks on control
Total World Capacity.....	2,672,000	
I. Western Hemisphere.....	1,686,900	
United States.....	1,070,000	
Aluminum Co. of America (Alcoa).....	280,200	
U. S. Government, DPC, Alcoa operated.....	387,200	
U. S. Government, DPC, Olin operated.....	18,800	
Reynolds Metals Co.....	70,800	
Canada: Aluminum Co. of Canada.....	510,400	Owned by Aluminum Ltd., same principal stockholders as Alcoa.
Brazil.....	6,800	
Cia. Electric-Quimica Brasileira S. A.....	2,800	
Cia. Brasileira de Alumínio.....	2,000	
Cia. Industrial Brasil Alumínio S. A.....	2,000	
II. Europe.....	709,700	
Germany.....	281,000	
Government and Vereinigte Aluminiumwerke, A. G.....	170,000	
Aluminiumwerke, G. m. b. H.....	48,000	
Aluminiumhütte Rheinfelden, A. G.....	38,000	100 percent subsidiary of A. I. A. G. (Swiss)
France.....	112,800	
Cie de Produits Electrochimiques et Electrochimieurgiques, Alsth, Froges et Camargue (A. F. O.).....	92,800	
Société d'Electrochimie d'Electrometallurgie et des Aciers Electriques d'Ugine.....	18,000	
Austria.....	105,000	
Salzburger Aluminium, G. m. b. H.....	110,000	Do.
Osterreichische Kraftwerke, A. G.....	5,000	German.
Vereinigte Aluminiumwerke A. G. (German).....	50,000	
British Isles.....	55,400	
British Aluminium Co., Ltd.....	37,700	Operated by British Aluminium Co., Ltd.
Government-Ministry of Aircraft Production.....	11,000	
South Wales Aluminium Co.....	5,000	Operated by British Aluminium Co., Ltd. owned by Aluminium Ltd.—25 percent; A. I. A. G.—50 percent; British Aluminium—25 percent.
Aluminium Corp. Ltd.....	1,700	Operated by British Aluminium Co., Ltd., for the Cartel which owns it. Aluminium Limited owns 28.57 percent of the A stock

Country and company	Installed capacity	Remarks on control
Italy	61,000	
Soc. dell'Aluminio Italiano (S. A. I.)	3,000	100 percent subsidiary of Aluminium, Ltd.
Soc. Italiana Metallurgica Ricerche Chimiche (S. I. M. R.)	1,000	Owning 50 percent by A. I. A. G. and 50 percent Italian.
Soc. Aluminio Veneta Anon. (S. A. V. A.)	15,000	Do.
Industria Nazionale Aluminata (I. N. A.)	20,000	Owning by Montecatini holdings.
Soc. Nazionale dell'Aluminio (S. N. A. I.)	15,000	Do.
S. A. Alcoa	20,000	
Norway	20,700	
Det. Norske Nitrid	10,300	54 Aluminium Ltd., 34 A. F. C., 14 Norsk Aluminum.
Fangvik Smelteverk, A. S.	5,000	Owning by International Aluminum Co. Ltd., partial subsidiary.
Stangfjordens Elektrosmelteværk Fabrik	1,000	100 percent subsidiary of Norsk Aluminum Co. Ltd.
Vigelande Berg	2,000	Do.
Norsk Aluminum Co.	2,000	50 percent Aluminum Ltd., 50 percent Norwegian.
Switzerland	27,700	
Aluminum Industrie, A. G. (A. I. A. G.)	20,000	24.5 percent Aluminum Ltd., 21 percent French (A. F. C.) and Soc. d'Electrochimie Uglie; 50 percent German (Verolun Aluminwerke, A. G. and Aluminwerke G. m. b. H.); 14.5 percent British Aluminum Co. Ltd.; and 14.5 percent Swiss interests.
S. A. pour l'Industrie de l'Aluminum	4,000	100 percent Gebrüder Offizial (Italian and German).
Hungary	10,000	
Ungarische Röntgen Guben A. G.	10,000	
Aluminum Manfred Weiss A. G.	4,000	
Ungarische Allgemeine Kolbenfabrik, A. G.	4,000	
Sweden: Svenska Aluminatkompaniet and subsidiary Svenska Alsidverken (S. A.)	4,700	40 percent Aluminum Ltd.; 21 percent Norsk Aluminum Co.; 9 percent Norwegian and Swedish interests.
Spain	17,000	
Aluminio Espanol S. A.	2,000	50 percent A. F. C.; 50 percent A. I. A. G.
Empreses Electromecanicas de Cordoba	2,000	
Sociedad General Espanol de Aluminio	2,000	
Francia: Fabrique Aluminale, A. D.	5,000	
Aluminat Nitrogen S. A.	2,000	
III. Russia	75,000	Government owned.
IV. India	5,000	
Indian Aluminat Co. Ltd.	5,000	50 percent Aluminum Ltd.; 50 percent British Aluminum Co. Ltd.
Aluminat Corp. of India, Ltd.	5,000	Indian owned.
V. Japan: (Korea 24,000, Manchuria, 15,000, Formosa 22,000, Japan 117,000)	198,000	Fifteen Japanese companies in 10 plants.

* From War Department Pamphlet, No. 21-125, The Light Metals Industry in Germany, May 1945, p. 4.

Source: Arranged from The World Aluminat Industry, the Special Aluminat Committee, War Production Board (Confidential), April 1945, appendix A. Extent of war damage is not known and completeness of Japanese figures is uncertain.

Appendix 12

WORLD CONTROL OF THE ALUMINUM INDUSTRY BY
ALCOA AND ALTED

The following table shows that Alcoa and its Canadian affiliate, Aluminium Limited (Altco), controlled in 1944, 64 percent of the world primary aluminum capacity. The two companies, although legally independent and without common officers and directors, are actually controlled by the same principal stockholders. Arthur V. Davis is chairman of Alcoa, and E. K. Davis, his brother, president of Altco. In the recent decision of the Circuit Court of Appeals for the Second Circuit in the antitrust case of the United States against the Aluminum Co. of America et al., decided March 12, 1945, the court refused to reverse the conclusion of the District Court for the Southern District of New York that Alcoa and Altco had separate and distinct corporate identities that made it improper to hold Alcoa responsible under the antitrust laws for the acts of Altco. However, from the practical viewpoint of competitors of Alcoa and Altco, the community of interests and reality of common control must be recognized. It is so recognized by persons familiar with the aluminum industry and by experts in various agencies of the United States Government. Thus, a representative of the Surplus Property Board who has held discussions with Alcoa executives on disposal plans of the Board has stated to the Board that the two companies are commonly controlled and are in effect, "twins." His discussions with the Alcoa executives indicate their intention to have the Canadian company export to the United States whatever amounts of primary aluminum will reduce the percentage of the American markets supplied by Alcoa below any level that may be decided in the case yet pending in court to constitute a violation of the antitrust law. The Special Aluminum Committee of the War Production Board, in its report of April 1945, The World Aluminum Industry described the activities of Altco in promoting the cartel of 1931, and stated:

"The only important producers not included in the cartel were Alcoa, the Russian and the Italian. The Italian firms, however, were partially controlled by the German and Swiss producers and Alcoa's interests were protected by the leading position held by Altco" (p. 45).

In discussing the same subject, the Foreign Economic Administration commented in a report prepared for the War Department, The Light Metals Industry in Germany, May 1945,

"Altco is thus considered in the public mind as the alter ego of Alcoa, although its separate identity has been established by court decision. While Alcoa is not a member of Alliance (the European cartel), possibly because of the restrictions of the Webb-Pomerene Act, it is not unreasonable to assume that Alliance was greatly influenced by Alcoa, at least until war broke out in 1939" (p. 64).

And again,

"Although the largest single producer, the Aluminum Company of America, is not a member, its influence, exerted through Aluminium, Ltd., upon the cartel is a matter of record" (p. 132).

The actual influence of Alcoa and Altco upon world competition and markets for aluminum is far greater than the control of 64 percent of world primary aluminum

capacity. Alted is in partnership directly or indirectly by joint investment with other aluminum companies in France, Great Britain, Italy, Norway, and Sweden (appendix 11). The other companies are thus subject to Alted's influence and must necessarily act consistently with Alted's policies. The power of Alted and thus of Alcoa is ramified widely. Except in the case of Government-controlled companies in Russia, all other aluminum producers in the world operate under the influential impact of Alcoa-Alted policies. The impending curtailment of the Japanese and German aluminum industries under United Nations control will increase still further the relative world power of Alcoa-Alted.

Share of World Primary Aluminum Industry under complete or partial control of Aluminum Co. of America (Alcoa) and Aluminium Ltd. (Alted, Canada) as of 1944

(Metric tons)

Item	Amount	Percent	Percent of ownership by Alcoa or Alted
Total world capacity.....	3,572,000	100.0	
Alcoa.....	977,000	27.5	
Own capacity.....	295,200	14.1	100 percent.
Licensed from U. S. Government (DPO).....	681,800	22.9	Licensed plants.
Alted.....	994,000	28.0	
Aluminium Company of Canada.....	510,000		100 percent.
Aluminium Industrie-Gesellschaft, A. G. (Germany).....	26,000		Owned by A. I. A. G. in which Alted owns 25.5 percent.
Salzgitter Aluminium, G. m. b. H. (Germany).....	10,000		Owned by A. I. A. G. in which Alted owns 25.5 percent.
North Wales Aluminium Co. (British Isles).....	5,000		Alted, 55 percent; A. I. A. G., 45 percent in which Alted owns 25.5 percent.
Aluminium Corp., Ltd. (British Isles).....	1,700		Owned by Alted in which Alted owns 100 percent.
A. I. A. G. (Switzerland).....	5,000		Alted owns 100 percent.
A. A. V. A. (Italy).....	15,000		Owned 50 percent by A. I. A. G. in which Alted owns 25.5 percent.
A. I. M. E. (Italy).....	1,000		Owned 50 percent by A. I. A. G. in which Alted owns 25.5 percent.
A. I. A. G. (Switzerland).....	25,000		Alted owns 25.5 percent.
A. A. (Sweden).....	4,200		Alted owns 51 percent and Norsk Aluminium Co. owns 49 percent of which Alted owns 50 percent.
Det Norske Nitrid (Norway).....	14,500		Alted owns 25.5 percent.
Haugesund Sandnesvark, A. S. (Norway).....	5,000		Owned by Alted in which Alted owns 25.5 percent.
Norsk Aluminium Co. (Norway).....	5,000		Alted owns 50 percent.
Aluminio Espanol S. A. (Spain).....	7,000		Owned 50 percent by A. I. A. G. in which Alted owns 25.5 percent.
Indian Aluminium Co. Ltd. (India).....	5,000		Owned 50 percent by Alted.

Source: Arranged from appendix 11. Note that the principal stockholders of Alcoa and Alted are identical. In 1933, they held 55 percent of Alcoa stock and 55 percent of Alted. They represented the Mellon, Drexel, Bunt, Clegg, Fisher, Gibbons, and Withers families.

UNITED STATES ALUMINUM INDUSTRY AS OF 1944

Product	Annual capacity											Number of products	
	Amount (in thousands of pounds)						Percent						
	Total	Private			Defense Plant Corporation		Total	Private			Defense Plant Corporation		
		Alcoa	Raynolds	Others	Alcoa	Others		Alcoa	Raynolds	Others	Alcoa		Others
Aluminum from bauxite	4,250,000	2,100,000	250,000		2,350,000	100.0	61.7	6.1		67.8	100.0		
Aluminum from other ores	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Primary aluminum	5,500,000	2,600,000	350,000		2,950,000	53.6	82.5	16.5		89.0	116.0		
Sheet, strip, and plate	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Castings and bar	4,250,000	2,100,000	250,000		2,350,000	55.5	61.7	6.1		67.8	100.0		
Wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
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Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum powder	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum paint	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum wire	1,250,000	500,000	100,000		650,000	52.0	20.8	10.4		21.2	16.0		
Aluminum foil	1,250,000	50											

1. ~~_____~~ _____
2. ~~_____~~ _____
3. ~~_____~~ _____
4. ~~_____~~ _____
5. ~~_____~~ _____

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Appendix 13b

UNITED STATES ALUMINA PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity ¹ (thousands of short-tons)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total	2,538	\$ 106,080	\$1,900	\$36,304	\$66,334	\$1,191
Alumina from bauxite	2,468	\$ 91,373	1,637	\$1,433	\$6,124	100
DPC plants:						
Alumina Co. of America	1,378	65,015	1,430	31,937	41,085	145
Bauxite Creek, Ark.	778	20,231	880	13,079	36,471	113
Bauxite Creek, La.	500	24,022	770	6,786	16,121	23
Privately owned plants	1,170	\$ 26,380				
With DPC equipment:						
Alumina Co. of America	1,070	26,380	318	6,365	14,382	16
E. St. Louis, Mo.	420	12,048	138	4,708	7,900	7
Mobile, Ala.	650	14,711	80	4,953	8,732	7
With RPO loan: Reynolds Metals Co., Listerhill, Ala.	100	(?)				
Alumina from other ores	90	14,717	230	5,167	8,300	1,093
DPC plants:						
Acon Ore, Harborsville, S. C.	18	3,225	80	1,371	1,711	53
Columbia Metals Corp., Salem, Ore.	18	3,387	78	941	2,381	77
Urb. Kansas, Kan., Salt Lake City, Utah	36	4,906	142	1,378	3,638	563
Monsanto Process Midwest Co., Laramie, Wyo.	18	2,200	18	1,573	1,006	60

¹ For DPC plants capacity estimated by War Production Board. For privately owned plants, capacity estimated by War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Investments less sales, transfers, etc., as of May 31, 1944, for DPC plants; as of Apr. 30, 1944, for privately owned plants.

³ DPC investment. Does not include RPO loan for facilities at Reynolds Metals Co., Listerhill, Ala. See footnote 7.

⁴ Capacity estimates as of May 31, 1944.

⁵ Laramie plant facilities.

⁶ DPC facilities in operating condition as of July 26, 1944.

⁷ Not reported. The RPO report shows this loan as part of the \$21,415,000 loan listed under reduction plants.

⁸ Includes \$27,200 for administrative expense and other modifications.

Source: Capacities for Government-owned plants compiled from monthly capacity figures of War Production Board; for privately owned plants from S. Rep. No. 14, Part 14, 76th Cong., 2d sess., p. 260. Investment data from Reconstructing Finance Corporation.

Appendix 13c

UNITED STATES ALUMINUM REDUCTION PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity (thousand pounds)			Government investment (in thousands) ¹				
	Contract designed ²	Revised rates ³	Performance ⁴	Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total			2,329,900	\$215,000				
Defense Plant Corporation plants	1,193,500	1,337,500	1,323,723	181,824	\$4,230	350,200	\$115,097	\$200
Aluminum Co. of America.....	1,193,000	1,336,000	1,323,000	174,545	4,100	345,200	111,812	201
Burlington, N. Y. ⁵	90,000	100,000	100,700	14,700	230	6,202	8,004	43
Jones Mills, Ark. ⁶	120,000	144,000	132,070	20,300	600	7,087	21,170	30
Los Angeles, Calif. ⁷	160,000	180,000	185,040	26,042	200	8,014	14,710	20
Queens, N. Y. ⁸	265,000	265,000	265,014	22,371	1,000	11,004	10,770	44
Riverbank, Calif. ⁹	90,000	100,000	100,000	11,007	141	4,411	7,000	12
Spokane, Wash. ¹⁰	100,000	110,000	110,700	22,270	170	6,001	14,001	20
Macona (St. Lawrence), N. Y. ¹¹	95,000	100,000	107,740	10,001	200	3,007	10,700	21
Trentdale, Ore. ¹²	120,000	144,000	140,710	20,000	200	4,700	12,700	40
Other Corp., Tacoma, Wash.	41,500		40,100	6,300	210	1,300	2,000	200
Privately owned plants			99,807	\$24,150				
With RPO loans			161,730	\$24,150				
Reynolds Metals Co.: Litchfield, Ala. Longview, Wash. ¹³			99,780	\$24,425				
			61,950	\$5,725				
With no Government financing			220,137					
Aluminum Co. of America: Alcoa, Tenn. Badin, N. C. Macona, N. Y. Niagara, N. Y. Vancouver, Wash. ¹⁴			240,000					
			110,070					
			240,010					
			41,000					
			171,007					

¹ For DPO plants, disbursements less sales, transfers, etc., as of May 31, 1944; for other plants, RPO loans disbursed as of Apr. 30, 1944.

² Estimated capacity as shown in Defense Plant Corporation contracts.

³ Revised estimate of capacity by the War Production Board based on 21,000,000 pounds for each standard bedline.

⁴ For DPO plants, monthly average production of peak quarter multiplied by 12. For private plants, basis of computation was not reported.

⁵ Includes investment in chemical facilities of Reynolds Metals Co. at Litchfield, Ala., which are not separately reported.

⁶ Standby condition as of Aug. 4, 1944, and one-third of plant subsequently dismantled.

⁷ Includes capacity of 3 bedlines (72,000 pounds) never operated.

⁸ Closed in May 1944 and dismantled for use as a Navy Ford motor.

⁹ Standby condition as of Aug. 4, 1944.

¹⁰ Includes capacity of one bedline (24,000 pounds) never operated.

¹¹ Standby condition as of Nov. 3, 1944.

¹² Estimated break-down.

Sources: Committee for Government-owned plants compiled from monthly capacity and production figures of the War Production Board; for privately owned plants from S. Rep. No. 10,700, 81st Cong., 2d sess., p. 202. Investment data from Reconstruction Finance Corporation.

Appendix 13d

UNITED STATES SHEET, STRIP, AND PLATE PLANTS

Annual capacity as of 1944 and Government investment as of May 31, 1945

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total.....	1,588,800	78151,988	31,383	341,396	309,183	3199
DPC plants.....	663,000	111,988	1,332	41,396	69,183	199
Aluminum Co. of America.....	579,000	91,987	1,127	34,182	56,839	153
Chicago, Ill.....	385,000	44,827	732	18,997	34,999	99
Spokane, Wash.....	388,000	47,680	375	15,255	31,951	99
Reynolds Alloys Co., Listerhill, Ala.....	72,000	29,051	225	7,144	15,630	31
Privately owned plants.....	950,800					
Aluminum Co. of America.....	589,800					
Alcoa, Tenn.....	694,000					
Edgewater, N. J.....	72,000					
New Kensington, Pa.....	65,800					
Reynolds Metals Co., Louisville, Ky.....	102,000					
All other companies.....	45,800					

¹ For Alcoa and Reynolds, peak month production multiplied by 12; for all others, machine capacity estimated by the War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Disbursements less sales, transfers, etc.

³ Includes investment in rod and bar facilities of 80,000,000 pounds capacity.

⁴ As of Mar. 31, 1945.

Sources: Capacities for Government-owned plants and privately owned plants other than Alcoa and Reynolds computed from monthly capacity figures of the War Production Board; for Alcoa and Reynolds from S. Rept. No. 10, Part 14, 78th Cong., 2d sess., p. 201, and Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, Part 47, 79th Cong., 1st sess., p. 6164. Investment data from Reconstruction Finance Corporation.

Appendix 13a

UNITED STATES ALUMINUM ROLLED ROD AND BAR PLANTS

Annual capacity as of 1944 and Government investment as of May 31, 1945-

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total.....	312,400	322,198				
Defense Plant Corporation plants.....	300,000					
Aluminum Co. of America, Newark, Ohio.....	300,000	22,188	\$315	\$11,000	\$11,133	\$21
Reynolds Alloy Co., Listerhill, Ala.....	60,000	(³)				
Privately owned plants.....	12,400					
Aluminum Co. of America, Massena, N. Y.....	12,400					
Reynolds Metals Co., Louisville, Ky.....	20,400					

¹ For DPC plants, machine capacity estimated by War Production Board. For privately owned plants, machine capacity estimated by War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Disbursements less sales, transfers, etc.

³ Investment in rod and bar facilities at Reynolds Alloy Co., Listerhill, Ala., is included with that for the sheet mill.

Sources: Capacities for Government-owned plants computed from monthly capacity figures of the War Production Board; privately owned capacities from S. Rept. No. 10, Part 16, 76th Cong., 2d sess., p. 201. Investment data from Reconstruction Finance Corporation.

Appendix 131

UNITED STATES ALUMINUM FOIL PLANTS ANNUAL
CAPACITY AS OF 1944

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)
Privately owned plants.....	68, 373
Aluminum Co. of America.....	15, 000
Edgewater, N. J.....	5, 000
New Kensington, Pa.....	10, 000
Reynolds Metal Co.....	27, 000
Glendale, L. I., N. Y.....	5, 000
Louisville, Ky.....	4, 000
Richmond, Va.....	21, 000
All other plants.....	17, 773

¹ For Alcoa and Reynolds, peak month production multiplied by 12; for all others, monthly average for production of past year multiplied by 12.

Source: Capacities for Alcoa and Reynolds from Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, Part 47, 78th Cong., 1st sess., p. 2104; for all others, computed from monthly production figures of the War Production Board.

Appendix 13g

UNITED STATES ALUMINUM TUBE DRAWING PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERN- MENT INVESTMENT AS OF APRIL 30, 1945

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment ² (in thousands)
Total.....	78,880	
Defense Plant Corporation plants.....	12,880	
Aluminum Co. of America.....	18,180	(*)
Cressona, Pa.....	8,880	(*)
Phoenix, Ariz.....	2,880	(*)
Reynolds Metals Co., Louisville, Ky.....	2,400	(*)
Privately owned plants.....	66,000	
With DPC equipment.....	12,000	
Aluminum Co. of America, Vernon, Calif.....	7,200	(*)
Revere Copper & Brass, Baltimore, Md.....	4,800	\$1,000
With no Government financing.....	54,000	
Aluminum Co. of America.....	44,780	
Lafayette, Ind.....	21,000	
New Kensington, Pa.....	13,780	
All other plants.....	9,220	

¹ For Alcoa and Revere Copper & Brass plants, peak month production multiplied by 12; for all other plants, machine capacities estimated by the War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Disbursements less sales, transfers, etc.

³ Investment included in that for extrusion facilities.

⁴ Investment included in that for forging facilities.

Source: Capacities for Government-owned plants and privately owned plants other than Alcoa and Revere Copper & Brass computed from monthly capacity figures of the War Production Board; Alcoa and Revere from S. Rept. No. 2, Part 14, 76th Cong., 2d Sess., p. 281. Investment data from the Reconstruction Finance Corporation.

Appendix 13h

UNITED STATES ALUMINUM FORGING PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total	645,000	\$ 394,958				
Defense Plant Corporation plants	253,540	73,036				
With investment of \$ million dollars or more	253,000	66,064	\$4,414	\$37,492	\$24,558	\$160
Aluminum Co. of America.....	126,000	43,303	4,063	20,751	20,494	164
New Castle, Pa.....	30,400	8,740	734	2,186	4,980	8
Canonsburg, Pa.....	76,800	20,147	900	12,000	12,040	8
Monaca, Mich.....	22,400	13,409	2,430	4,954	5,955	126
Aluminum Forgings, Inc., Erie, Pa.....	14,400	9,465	330	4,400	4,675	40
General Motors-Chevrolet, Saginaw, Mich.....	111,000	8,837	18	2,311	6,508	0
With investment under \$ million dollars	22,040	8,965	438	2,470	4,051	50
General Motors-Chevrolet, Anderson, Ind.....	21,700	4,100	(9)	4,000	2,100	30
Reynolds Metals Co., Louisville, Ky.....	240	2,700	304	1,400	000	17
Canton Drop Forgings & Mfg. Co., Mansfield, Ohio.....	(9)	1,300				
Privately owned plants	397,000	\$ 111,197				
With DPC equipment	264,076	\$ 11,107				
Aluminum Co. of America.....	170,700	1,638				
Cleveland, Ohio.....	187,200	823				
Vernon, Calif.....	13,500	\$ 1,101				
Chrysler-Dodge, Detroit, Mich.....	5,100	1,519				
Ford Motor Co., Dearborn, Mich.....	17,408	291				
Havers Copper & Brass, Rome, N. Y.....	7,080	367				
Tilling Metal Mfg. Co., Baltimore, Md.....	480	14				
Tube Turn, Inc., Louisville, Ky.....	67,440	4,745				
Willys-Overland Motors, Toledo, Ohio.....	10,000	2,425				
General Electric Co., Fort Wayne, Ind.....	6,000	(9)				
With no Government financing	73,024					
Aluminum Co. of America.....	7,820					
Edgewater, N. J.....	6,120					
New Kensington, Pa.....	1,700					
All other plants	64,704					

¹ For DPC plants, machine capacity estimated by War Production Board. For privately owned plants listed separately, bank monthly production multiplied by 12. For "all other plants" machine capacity estimated by War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Disclosures on last sales transaction, etc., as of May 31, 1944, for DPC plants except Canton Drop Forgings & Mfg. Co., as of Apr. 30, 1944, for assembled facilities and for Canton Drop Forgings & Mfg. Co.

³ Does not include DPC investment in facilities at General Electric Co., Fort Wayne, Ind. See footnote 2.

⁴ Amount for land included with that for buildings.

⁵ Uncompleted plant. Loans terminated Apr. 28, 1944.

⁶ Includes investment in tube drawing facilities.

⁷ Investment in forging facilities inseparable from total investment and was not reported.

Source: Computations for privately owned plants listed separately from S. Rep. No. 10, Part 15, 76th Cong., 2d sess., p. 204 for all other plants computed from monthly capacity figures of the War Production Board. Investment data from Reconstruction Finance Corporation.

Appendix 13i

UNITED STATES ALUMINUM SAND CASTING PLANTS (EXCLUDING CYLINDER HEADS) ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and auto-motive
Total	272,026	\$12,804				
Defense Plant Corporation plants	26,200	4,575	305	\$1,444	22,080	\$25
General Motors Corp., Delco-Remy Div., Bedford, Ind.	15,600	3,000	25	980	1,975	10
National Bronze and Aluminum Foundry Co., Cleveland, Ohio	12,200	1,575	40	464	1,052	19
Privately owned plants	251,136	14,229				
With DPC equipment	70,429	14,229				
Acme Aluminum Alloys, Inc., Dayton, Ohio	9,000	91				
Aluminum Alloys Corp., Detroit, Mich.	4,500	(³)				
Aluminum Industries, Inc., Cincinnati, Ohio	4,800	(³)				
Behm Aluminum & Brass Corp., Detroit, Mich.	10,800	(³)				
Elmhurst Foundry Co., Inc., Elmira, N. Y.	1,764	531				
Ford Motor Co., Dearborn, Mich.	9,000	1,612				
General Malleable Corp., Werra Alum. Div., Waukegan, Wis.	4,164	216				
General Motors Corp., Buick, Flint, Mich.	3,000	8,982				
Howard Foundry Co., Chicago, Ill.	3,000	(³)				
The Maytag Co., Newton, Iowa	6,000	(³)				
Metal Parts Corp., Racine, Wis.	600	(³)				
National Foundry Co., Inc., St. Louis, Mo.	600	(³)				
Oberlin Foundries, Inc., Syracuse, N. Y.	3,000	(³)				
Packard Motor Co., Detroit, Mich.	7,800	2,937				
With no Government financing	180,708					
Aluminum Company of America	22,980					
Cleveland, Ohio	10,200					
Fairfield, Conn.	6,000					
Detroit, Mich.	5,000					
New Kensington, Pa.	100					
Verona, Calif.	2,680					
All other plants	181,728					

¹ For DPC plants, machine capacities estimated by the War Production Board; for private plants listed separately, basis of computation was not reported; for other privately owned plants, monthly average for production of peak quarter multiplied by 12.

² Disbursements less sales, transfers, etc., as of May 31, 1945, for DPC plants; as of April 30, 1945, for private facilities.

³ The investment in this equipment is included in the \$2,537,000 figure for Packard Motor Co., Detroit, Mich.

Sources: Capacities for Government-owned plants and "all other" privately owned plants computed from monthly capacity and production figures of the War Production Board; for listed privately owned plants from S. Rept. No. 10, part 14, 76th Cong., 1st Sess., p. 225-226. Investment data from Reconstruction Finance Corporation.

Appendix 13j

UNITED STATES PERMANENT MOLD ALUMINUM CASTING PLANTS ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment ² (in thousands)
Total	181,300	28,300
Defense Plant Corporation plants	4,000	5,015
Reynolds Metals Co., Springfield, Mass.	4,000	5,015
Privately owned plants	145,300	204
With DPC equipment	13,300	204
Emery Aluminum Co., Los Angeles, Calif.	1,000	100
Monarch Aluminum Mfg. Co., Cleveland, Ohio	4,300	179
The Fernald Co., Madison, Ohio	7,300	0
With no Government financing	132,000	
Aluminum Company of America	25,300	
Cleveland, Ohio	15,300	
Detroit, Mich.	2,000	
Fairfield, Conn.	5,000	
New Kensington, Pa.	100	
Vernon, Calif.	1,300	
All other plants	107,000	

¹ For the DPC plant, estimated capacity when conversion is complete in August 1945. For privately owned plants listed separately, machine capacity estimated by the War Production Board or by the companies, the basis of estimate varying from plant to plant.

² Approximate commitment as of June 30, 1945, for the DPC plant; disbursements less sales, transfers, etc., as of April 30, 1946, for assembled facilities.

Source: Capacities for privately owned plants listed separately from S. R. No. 16, part 14, 75th Cong., 2d Sess., p. 240-247, for "all other plants" computed from monthly capacity figures of the War Production Board; for DPC plant from Reconstruction Finance Corporation. Investment data from Reconstruction Finance Corporation.

Appendix 13:

UNITED STATES ALUMINUM DIE CASTING PLANTS
ANNUAL CAPACITY AS OF 1944

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)
Privately owned plants	137,964
Aluminum Company of America, Garwood, N. J.	14,829
All other plants	113,134

¹ For Alcoa, monthly installed capacity multiplied by 12; for all other plants, machine capacity estimated by the War Production Board or by the companies, the basis of estimate varying from plant to plant.

Source: Alcoa capacity from S. Rept. No. 18, part 16, 78th Cong., 2d Sess., p. 226-227; all other plants computed from monthly capacity figures, War Production Board.

Appendix 131

UNITED STATES ALUMINUM CAST CYLINDER HEAD PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment (in thousands) ²				
		Total	Land and improvements	Buildings	Machinery and equipment	Tools and automotive
Total	275,088					0
Defense Plant Corporation plants	188,404	\$41,089	\$840	\$20,709	\$19,295	\$128
With investment of \$5 million dollars or more	179,094	39,923	809	19,217	17,999	87
Aluminum Company of America, Kansas City, Mo.	36,000	5,533	639	2,117	3,057	13
Chrysler Corp., Dodge-Chicago Div., Chicago, Ill.	36,000	7,478		2,978	3,500	
Ford Motor Co., Dearborn, Mich.	36,004	7,850	38	4,323	3,465	34
General Motors Corp., Buick Motors Div., Flint, Mich.	45,000	9,083	122	4,373	4,537	51
Wright Aeronautical Corp., Lookland, Ohio	36,000	6,416		3,416	3,000	
With investments under \$5 million dollars	14,400	4,387	131	2,491	1,727	28
National Aluminum Cylinder Head Co., Cleveland, Ohio	14,400	4,387	131	2,491	1,727	28
Privately owned plants	85,252	9,065				0
With DPC equipment	39,100	9,065				
Caterpillar Tractor Co., Peoria, Ill.	6,700	480				
Nash-Kelvinator Corp., Kenosha, Wis.	7,900	908				
Oberdorfer Foundries, Inc., Syracuse, N. Y.	1,900	117				
Sarvel, Inc., Evansville, Ind.	3,400	118				
Wright Aeronautical Corp., Woodbridge, N. J.	9,200	7,472				
With no Government financing	46,152					
Aluminum Company of America, Detroit, Mich.	36,000					
Bridgeport, Conn.	6,000					
30,000						
All other plants	17,682					

¹ For DPC plants, machine capacity estimated by War Production Board. For privately owned plants separately listed, rated capacity; for all other privately owned plants, monthly average of production of past quarter multiplied by 12.

² Disbursements less sales, transfers, etc., as of May 31, 1945 for DPC plants; as of April 30, 1945 for privately owned plants.

³ Loans terminated July 28, 1944.

Source: Compilation of separately listed privately owned plants from Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, part 47, 76th Cong., 1st Sess., p. 20; for all other private plants and for DPC plants computed from monthly capacity and production figures of the War Production Board. Investment data from Reconstruction Finance Corporation.

Appendix 13m

UNITED STATES ALUMINUM EXTRUSION PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT AS OF MAY 31, 1945

Owner, operator, and location	Annual capacity (thousand pounds) ¹			Government investment (in thousands) ²			
	Rod and bar	Shapes	Tube blooms	Total	Land and im- prove- ments	Build- ings	Ma- chinery and equip- ment
Total.....	86,628	231,528	120,576	\$102,151	\$1,561	\$44,628	\$55,921
Defense Plant Corporation plants.....	51,324	106,144	26,923	\$102,151	1,561	44,628	55,921
With investment of \$5 million or more.....	51,324	100,416	20,016	\$97,228	1,513	43,479	52,125
Aluminum Company of America.....				55,005	1,243	37,075	36,527
Crescent, Pa. Phoenix, Ariz.....	(0)	(0)	(0)	\$25,387	726	16,573	18,973
Bohn Aluminum & Brass Corp. Adrian, Mich. 734 Los Angeles, Calif.....	2,536	30,480		8,140	25	3,750	4,344
Extruded Metals, Inc., Grand Rapids, Mich.....	12,320	2,408	1,116	5,775	22	2,796	2,949
Revere Copper & Brass Corp. Baltimore, Md.....	22,664	8,460	6,826	7,269	69	3,235	2,963
With investment under \$5 mil- lion.....		4,728	5,916	4,913			
Reynolds Metals Co., Louisville, Ky.....		4,728	5,916	4,913	48	1,180	2,686
Privately owned plants.....	35,304	35,304	108,644				
Aluminum Company of America.....	12,920	115,206	84,000				
Detroit, Mich.....	2,780	2,408					
Lafayette, Ind.....	1,000	75,000	54,000				
New Kensington, Pa.....		14,000	12,000				
Vernon, Calif.....	3,200	25,000	12,000				
All other plants.....	21,384	41,194	10,644				

¹ Monthly average for peak quarter multiplied by 12 for all plants except Alcoa privately owned plants, for which the capacities are peak month production multiplied by 12.

² Disbursements less sales, transfers, etc.

³ Includes investment in tube drawing facilities at Crescent, Phoenix, and Louisville.

⁴ Some extrusion machinery has been removed and the plant has been leased for an ordnance repair depot.

⁵ Includes investment in tube-drawing facilities.

Sources: Capacities for Alcoa privately owned plants from S. Rept. No. 18, part 18, 75th Cong., 2d Sess., p. 201; for all other plants, computed from monthly production figures of the War Production Board. Investment data from Reconstruction Finance Corporation.

Appendix 13a

UNITED STATES ALUMINUM WIRE AND CABLE PLANTS
ANNUAL CAPACITY AS OF 1944

Owner, operator, and location	Annual capacity ¹ (Thousands of pounds)
Wire: Privately owned plants.....	29, 000
Aluminum Company of America, Mazonia, N. Y.....	22, 000
Reynolds Metal Co., Louisville, Ky.....	200
All other plants.....	4, 700
Cable: Privately owned plants.....	25, 000
Aluminum Company of America, Mazonia, N. Y.....	25, 000
All other plants.....	12, 000

¹ For Alcoa and Reynolds, peak month production multiplied by 12; for all other plants, monthly average for production of peak quarter times 12.

Source: For Alcoa and Reynolds, Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, part of 79th Cong., 1st Sess., p. 6107; for all other plants, computed from monthly capacity figures of the War Production Board.

Appendix 13a

UNITED STATES ALUMINUM RIVET PLANTS, ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT AS OF APRIL 30, 1945

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)	Government investment ² (in thousands)
TOTAL	21,764	
Defense Plant Corporation plants	7,000	
Tell Aircraft Co., Buffalo, N. Y.	600	5000
Consolidated Valve Aircraft Corp., San Diego, Calif.	1,000	
Ford Motor Co., Dearborn, Mich.	4,000	
Goodyear Aircraft Corp., Akron, Ohio	90	
Knott Mfg. Co., Detroit, Mich.	700	
Lockhead Aircraft Corp., Burbank, Calif.	300	5000
Privately owned plants	14,764	
Aluminum Company of America, all plants	12,000	
Reynolds Metals Co., Louisville, Ky.	2,764	
All other plants		

¹ For DPC plants, machine capacity estimated by the War Production Board. For privately owned plants, machine capacity estimated by the War Production Board or by the companies, the basis of estimates varying from plant to plant.

² Disbursements for sales, transport, etc.

³ The investment in rivet facilities is inseparable from total investment in the aircraft plant and is not reported.

⁴ Peak month production multiplied by 12.

⁵ Not reported.

Sources: Capacities for Government owned plants and privately owned plants other than Alcoa and Reynolds computed from monthly capacity figures of the War Production Board; for Alcoa and Reynolds from Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, part 47, 79th Cong., 1st Sess., p. 2107. Investment data from the Reconstruction Finance Corporation.

Appendix 13p

UNITED STATES ALUMINUM POWDER PLANTS ANNUAL CAPACITY AS OF 1944 AND GOVERNMENT INVESTMENT

Owner, operator, and location	Annual capacity (thousands of pounds)	Government investment (in thousands)
Total	191,004	\$21,000
Government-owned plants	133,020	\$1,970
Defense Plant Corporation plants	64,344	\$230
McAker Mfg. Co., Rochester, Mich.	27,120	
National Smelting Co., Cleveland, Ohio	37,224	(1)
Navy plants	68,676	1,730
Aluminum Company of America, Glassboro, Pa.	33,336	1,370
Metals Disintegrating Co. of Missouri, Webster Grove, Mo.	35,340	40
Privately owned plants	58,284	0
With DPC equipment	2,600	0
Merrill Products Co., San Francisco, Calif.	2,600	0
With no Government financing	55,284	0
Aluminum Company of America	12,000	0
Alcoa, Tenn.	6,000	0
New Kensington, Pa.	6,000	0
Reynolds Metals Co., Louisville, Ky.	19,280	0
All other plants	24,004	0

¹ For privately owned plants listed separately, peak month production multiplied by 12; for all other plants, monthly average for production of peak quarter multiplied by 12.

² Disbursements less sales, transfers, etc. as of April 30, 1945, for DPC plants; investment as of March 31, 1945 for Navy plants.

³ Does not include investment in National Smelting Co., Cleveland, Ohio. See footnote 4.

⁴ Investment in aluminum powder facilities inseparable from that for other products and was not reported.

⁵ Sources: Capacities for privately owned plants listed separately from Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprise, part 47, 79th Cong., 1st Sess., p. 6107; for all other plants, computed from monthly production figures of the War Production Board. Investment data from the Reconstruction Finance Corporation.

Appendix 13a

UNITED STATES ALUMINUM PASTE AND FLAKE PLANTS,
ANNUAL CAPACITY AS OF 1944

Owner, operator, and location	Annual capacity ¹ (thousands of pounds)
Privately owned plants.....	44,952
Aluminum Company of America.....	6,000
Alcoa, Tenn.....	1,000
New Kensington, Pa.....	1,000
Reynolds Metals Co., Louisville, Ky.....	6,000
All other plants.....	32,952

¹ For Alcoa and Reynolds, peak monthly production multiplied by 12; for all others, monthly average for production of peak quarter times 12.

Source: Capacities for Alcoa and Reynolds from Senate Hearings of the Special Committee to Study and Survey Problems of Small Business Enterprises, part 47, 79th Cong., 1st Sess., p. 6107; for all other plants, computed from monthly production figures of the War Production Board.

Appendix E14

EXPLANATION OF CANADIAN COSTS OF PRODUCING ALUMINUM

The following table shows that the prewar mill cost in 1937 of producing aluminum in Canada (at Arvida and Shawinigan Falls) was 7.11 cents per pound after deducting profits of subsidiaries. The break-down of this figure is taken from the information supplied by the Canadian company, Aluminium Limited, in the anti-trust case, *U. S. A. v. Alcoa, et al* (Interrogatory 179) and partly from the Canadian report on the Shipshaw investigation.

In 1943, costs for the first half of the year were 18.86 cents per pound according to figures given in the investigation of the Shipshaw project by the Canadian House of Commons (Proceedings, January 26, 1944, p. 741). The 1943 cost is inflated by the high cost of bauxite because of the excessive transportation cost created by the German submarine campaign. It is also inflated by the special depreciation allowance of 5.48 cents per pound granted by the Canadian government on the Shipshaw power project and on the wartime investment in the aluminum plant facilities. Certain interest charges on advances and loans by foreign governments, including the United States, also add a small cost item to the 1943 figure. But the total of 18.86 cents is further inflated by the unrevealed profits of subsidiaries that should be deducted.

The postwar estimated cost given in the table is exclusive of all inflated items caused by the war. It amounts to 6 cents per pound at the mill. This compares with between 8 and 9 cents per pound estimated for the mill costs of aluminum produced at American plants after the war, including the best Government-owned plants if they are taken over by private operators.

The low cost of 6 cents for Canadian aluminum is based on the following assumptions:

- (1) Power is reduced by 75 percent from prewar costs on the assumption that nearly all of it will come from the Shipshaw project. This cost reduction is likely, because in a hydro project half of the cost of power is due to interest on long-term investment and most of the rest of the cost is due to depreciation. Since no interest will be paid on the power investment after the war, and 60 percent of the investment in the Shipshaw dam will be depreciated at the end of the war, the only costs remaining for power will be the very small costs for operating and maintaining the dam and facilities, and 40 percent of normal depreciation. All of these items amount to about only one-fourth of the normal costs.
- (2) Ore costs will be about the same after the war as estimated for Alcoa at Mobile, Ala. Bauxite will be very cheap; ocean shipping will go back at least to prewar levels for ships chartered by the Canadian company; and depreciation on the plant will not be charged because it was written off during the war. Postwar costs at Mobile, Ala., are estimated at about \$25 per ton of alumina, and this is certainly adequate for Arvida, Canada. It amounts to 2.5 cents per pound of aluminum.

(3) There will be no special depreciation charges after the war and virtually no interest charges left. All of these items, or most of them as related to the great expansion of facilities during the war, will have been accounted for during the war.

(4) All other costs will be the same as in 1943. This, of course, is an extremely conservative assumption since such costs should go lower.

(5) Profits of subsidiaries are a very uncertain item. Based on 1937 experience, they might be nearly 2 cents per pound of metal. Here, a conservative estimate is made of only 0.65 cent per pound. However, if subsidiary profits reach the 1937 level, then aluminum will cost 1 cent less per pound, or only 5 cents.

From a practical viewpoint, we may conclude that Canadian metal will cost at the mill about 6 cents per pound after the war and possibly only 5 cents. This will compare with about 8 or 9 cents for American metal. In addition, there will be costs of transporting metal to market, and general selling and administrative costs. From figures submitted by the Canadian company and by Alcoa in the antitrust case, these additional charges should not exceed 2 cents per pound. Then, Canadian aluminum would cost delivered to market from 7 to 8 cents per pound, while American aluminum would cost from 10 to 11 cents per pound. Canadian aluminum will have about a 3-cent advantage in cost over the American aluminum and could easily bear the 3 cents import duty into this country in order to compete with domestic producers.

CANADIAN ALUMINUM

Mill Costs of Pig Aluminum Per Pound, 1937, 1943 and Estimated Postwar Cost
(Production at Full Capacity)

[Cents per pound]

Cost Item	1937	1943, 1st half	Postwar estimated cost
Pot lining	0.20	3.16	.16
Electrodes	1.03	1.16	1.16
Power	2.14	1.94	.30
Ore	3.80	7.45	2.30
Electrolyte	.50	.56	.56
Alloys	.07	.07	.07
Labor	.61	.71	.71
Repairs and maintenance, equipment	.20	.16	.16
Repairs and maintenance, buildings and miscellaneous	.06	.09	.09
Plant administration	.19	.34	.34
Miscellaneous plant expense	.09	.13	.13
Depreciation, aluminum plant only	.16	.10	.10
Ingot pouring charge	.14	.17	.17
Total mill cost	9.08	13.14	6.66
Special depreciation	.00	5.45	
Interest, proportion	.00	.34	
Less profits of subsidiaries	9.08	13.06	6.66
	1.92	(9)	1.00
Net mill cost	7.11	(9)	6.66

(Not known.

Estimated.

Source: 1937 data from Aluminum Limited reply to interrogatory 179, U. S. A. v. Alcoa, et al.
1943 data from Canadian House of Commons, Proceedings, Jan. 24, 1944, p. 741.

Appendix 15a

ESTIMATED POSTWAR ALCOA COSTS OF PRODUCTION
OF PIG ALUMINUM

The following table shows the estimated postwar range of mill costs of pig aluminum at each Alcoa plant, assuming capacity operations. Full details in support of the computations appear in a confidential report of the Bonneville Power Administration, Department of Interior, "Government Aluminum Plants: Production Costs and Postwar Prospects," February 16, 1945.

These cost estimates have been built up from a mixture of actual and estimated costs of individual items. War-time costs at some Government-owned plants have been substituted where appropriate, even though the result is a probable overstatement for the Alcoa plants after the war when more normal operating efficiency can be attained. Estimated costs of alumina are shown in the next table, Appendix 15b. Representative war-time costs at Government reduction plants and possible postwar costs are given in Appendix 15c.

The table shows that costs for the different plants should range between 8 cents and somewhat over 9 cents per pound. Alcoa officials have advised a representative of the Surplus Property Board that current costs of the capacity now in operation are around 9 cents. Based on prewar experience, total costs including general administration and transportation of metal to destination, should range between 10 cents and 11 cents per pound.

Costs of production at lower levels of operation need not necessarily be higher. Additional production cut-backs would eliminate higher cost units and would either suspend some of the higher power costs or else release Alcoa generated power for sale for public use. Prewar cost experience, analyzed in Appendix 9, showed only a small increase in average production cost at sharply reduced rates of production. Today, the cut-back limits for economical production have shifted, partly because of purchase contracts for power that invoke penalty charges for cancellation.

Estimated Range of Alcoa Postwar Mill Costs Per Pound of Pig Aluminum, Assuming Capacity Operations, and Comparison with 1937 Costs

Cost item	Vancouver, Wash.	Prewar plants				1937 average prewar plants
		Masena, N. Y.	Niagara Falls, N. Y.	Alcoa, Tenn.	Badin, N. C.	
	Cents	Cents	Cents	Cents	Cents	Cents
Labor	1.115-1.343	1.100-1.210	1.100-1.275	0.980-1.075	0.980-1.075	0.79
Alumina (2 pounds per pound of metal)	2.974-3.534	2.995-3.555	2.995-3.555	2.583-3.143	2.605-3.225	3.25
Power (.9 kilowatt per hour per pound of metal)	1.890-1.890	1.620-1.620	1.350-1.350	2.070-2.070	1.440-1.980	1.23
Cryolite	.094-.094	.123-.144	.123-.144	.123-.144	.123-.144	.30
Aluminum fluoride	.320-.320	.340-.374	.340-.374	.340-.374	.340-.374	.30
Carbons	.959-1.005	1.309-1.430	1.309-1.430	1.309-1.430	1.309-1.430	1.00
Depreciation	.000-.543	.120-.120	.120-.120	.120-.120	.120-.120	.15
Other items - excluding transportation	.605-.905	.579-.890	.579-.890	.579-.890	.579-.890	.25
Total estimated range of costs	7.900-9.505	8.185-9.383	7.975-9.145	8.103-9.257	7.555-9.250	7.75

See footnotes on table, p. 111.

¹ Vancouver costs estimated as follows: The use of Troutdale costs for some items is based on proximity of plants, comparable modernity, similar wage rates, and comparable capacities: 173 million pounds at Vancouver, 144 million pounds at Troutdale.

Labor and overhead.—Maximum is the April, 1944, cost at Troutdale, Oregon, representative of costs during the period of stable operations, November, 1943–April, 1944. Minimum is 10 percent lower, assuming normal labor turnover and improved efficiency of labor as compared with abnormal conditions at Troutdale.

Alumina.—Minimum is lowest estimated postwar Mobile cost plus freight. Maximum is highest estimated postwar Mobile cost plus freight. Alcoa proposes to build an alumina plant near the Vancouver plant. Mobile capacity cannot supply both Vancouver and the eastern Alcoa plants. Vancouver costs of alumina would be less than E. St. Louis plus freight; otherwise the Vancouver plant would not be built. Vancouver costs would be close to Mobile costs plus freight; otherwise Mobile capacity might expand to supply Vancouver.

Power.—Estimated post-war cost of purchased power. See power, appendix 2.

Cryolite and aluminum fluoride.—Average Troutdale, Oreg., costs for 1943, taken as more representative than any single month or small group of months.

Depreciation.—Maximum is based on reported investment of \$17,000,000 in plant, 5 percent depreciation annually and 173 million pounds output. Plant is entitled to 30 percent accelerated depreciation annually, having been completed in 1940 and 1941. Minimum estimate assumes complete write-off by 1943.

Other items excluding transportation.—Minimum is cost at Troutdale, Oreg., exclusive of depreciation and transportation. Maximum is 30 percent greater to allow for possible understatement of tax component on DFC property. Washington State taxes include one-fourth of 1 percent on gross revenues. On 14-cent aluminum this tax is 0.007 cent per pound. Note that cost of other items at Massena DFC plant was 0.379 cents and at Jones Mills DFC plant 0.500 cents in 1943.

² Massena costs estimated as follows: The use of Massena DFC costs for some items is based on proximity of plants, and similar wage rates. Differences in modernity of plants are recognized.

Labor.—Minimum is Massena DFC plant average for 1943. Maximum is 10 percent higher, allowing for lower efficiency of older two-thirds of capacity in the Alcoa plant.

Alumina.—Minimum and maximum estimates of postwar costs at Mobile plus freight.

Power.—Estimated post-war cost of generated and purchased power. Of this amount, 0.103 cents represents depreciation charges on Alcoa generation and transmission facilities. See power, appendix 2.

Cryolite, aluminum fluoride, and carbons.—Minimum is Massena DFC plant average for 1943. Maximum is 10 percent greater, allowing for lower efficiency of older two-thirds of capacity in the Alcoa plant.

Depreciation.—Estimated at 10 percent average of all Alcoa plants on the assumption that rate still applies to the older two-thirds of capacity at Massena and that accelerated war depreciation will have eliminated postwar depreciation on most of remainder of capacity.

Other items excluding transportation.—Minimum is equal to similar costs at Massena DFC plant. Maximum is 1937 average for all Alcoa plants. Note that 1943 costs of other items were 0.605 cents at Troutdale DFC plant and 0.500 cents at Jones Mills DFC plant.

³ Niagara Falls costs estimated as follows:

Labor.—Minimum is 5 percent greater than Massena DFC minimum, reflecting 5 percent higher wage rates in 1943 as shown in auditors' report to DFO on Alcoa DFC plant operation for 1943.

Alumina.—Minimum and maximum estimates of postwar costs at Mobile plus freight.

Power.—Estimated postwar cost of generated and purchased power. Depreciation costs would be negligible. See power, appendix 2.

Cryolite, aluminum fluoride, carbons, and other items.—Same estimates as for Massena. The Niagara plant facilities are all prewar, some nearly 40 years old.

Depreciation.—Estimated at 1937 average for all Alcoa plants. Facilities should have been virtually written off by 1945 because of age.

⁴ Alcoa and Badin costs estimated as follows:

Labor.—Nearly 13 percent less than Massena estimate. Wage rates are 10 to 15 percent lower than at Massena and plants have some older prewar capacity. For wage rates, see auditors' report to DFO on Alcoa DFC plant operations for 1942.

Alumina.—Minimum and maximum estimates of postwar costs at Mobile plus freight.

Power.—Estimated postwar cost of generated and purchased power. At Badin, depreciation on Alcoa generation and transmission facilities would be 0.232 to 0.306 cents per pound of metal. At Alcoa, depreciation on Alcoa generation and transmission facilities would be 0.234 cents per pound of metal. See power, appendix 2.

Cryolite, aluminum fluoride, carbons, depreciation, and other items.—Estimated on same basis as for Massena.

⁵ Rearranged from appendix 9.

⁶ Excludes depreciation on generation and transmission facilities included in cost of Alcoa generated power.

Appendix 15

ESTIMATED MILL COSTS OF PRODUCING ALUMINA AT VARIOUS PLANTS

The following table presents a set of estimated mill costs of producing alumina at the Government plants and the Alcoa plants. Estimates have not been made for the Reynolds plant at Listerhill, Ala., because of lack of sufficient information on the grades and costs of bauxite that have been used and will be used after the war. Full details supporting this table appear in a confidential report of the Bonneville Power Administration, Department of Interior, "Government Aluminum Plants: Production Costs and Postwar Prospects," February 16, 1945.

Each estimate reflects a different grade and source of bauxite and is related to 1937, 1943 and the postwar period. The 1937 estimate is entirely hypothetical for those plants that were not operating in that year, but the estimate is of value for comparison with the actual costs in that year of the Alcoa plant at East St. Louis. All estimates assume that prices of fuel, lime and soda ash, labor costs, and other expenses incurred in 1943 at Baton Rouge and Hurricane Creek may be used in comparing hypothetical costs for 1937 and in the postwar period. The result probably is an overstatement of the 1937 figures and of the attainable postwar costs.

The conclusions to be drawn from the table are as follows:

1. *Baton Rouge (DPC) plant.*—a. From the viewpoint of prewar costs, using 1937 as a basis, this plant would have been as economical as Alcoa's East St. Louis plant, provided it had operated with the same costs of bauxite as Alcoa experienced, and with the same ocean transportation costs. East St. Louis in 1937 had costs of \$39.15-\$39.44 per short ton (appendix 7), including profits of the Alcoa Steamship Co. subsidiary. The plant then used 1.5 tons of Surinam bauxite for every ton of Arkansas bauxite. In 1937, using only Surinam bauxite, Baton Rouge costs would have been \$30.54-\$27.28; using only Arkansas bauxite, costs would have been \$29.76-\$30.22.

b. From the viewpoint of war costs, using 1943 as a basis, this plant could have produced at the same costs as East St. Louis if it had been fed the same grade of Arkansas ore at Alcoa's own costs. Instead of actual costs of \$52.60 per short ton, this plant would have had costs of \$32.22 per short ton. The East St. Louis costs are estimated for 1943 as between \$30.16 and \$34.16, based only on high-grade ore.

If Baton Rouge had used the same grade of ore from Arkansas in 1943 as Alcoa did at East St. Louis, but had paid instead the Metals Reserve Company published price, costs still would have been much lower than were actually incurred—\$37.93 instead of \$52.60. The latter figure is the reported mill cost in 1943 by the Defense Plant Corporation.

c. From the postwar viewpoint, this plant would still be a competitive producer if supplied with Surinam ore at Alcoa's estimated postwar costs. However, if the plant were supplied with Arkansas medium-grade ore, the same as was fed to Hurricane Creek during 1943, then the costs would rise to about \$43.22 per short ton.

2. *Hurricane Creek (DPC) plant.*—a. From the viewpoint of prewar costs, taking 1937 as a basis, and using only Arkansas high-grade ore, this plant would have been more economical than Alcoa's East St. Louis plant, provided it had operated with the same cost of bauxite as Alcoa experienced. Because it is located among the bauxite mines and has been designed to take wet ore, it would have

saved transportation and drying costs, producing at the very low level of \$19.40-\$19.86 per short ton. These costs might have been still further reduced by additional economies in various operations such as digesting, filtering, and settling, which would be gained from the use of higher grade ore.

b. On the basis of 1943 war costs, this plant would have been more economical than East St. Louis if it had used the same fairly high-grade ore taken by that plant. Based on Alcoa's own costs for ore, Hurricane Creek alumina would then have cost about \$30.98 per short ton, and based on the Metals Reserve Company scheduled price for that grade of ore, the cost would have been \$26.68 per short ton of alumina.

c. For postwar operation, Hurricane Creek can draw on the Metals Reserve Company stockpile of medium-grade ore and upon supplies of similar grade sold by independent bauxite mining companies in Arkansas. On that basis, the actual mill cost of production of \$31.46 per short ton in 1943, as reported by DPC, would probably be a postwar maximum. Monthly production costs during 1945 have fallen as low as \$28 per ton. Some decline in the price of medium-grade bauxite is possible, lowering the cost of alumina still further.

3. *East St. Louis (Alcoa) plant.*—In 1943, this plant used a fairly high grade of Arkansas bauxite, and very little imported ore. According to the president of the Aluminum Ore Co., C. B. Fox, the costs of soda ash and lime at East St. Louis are the same as at Hurricane Creek. The costs of Alcoa bauxite have been estimated by Metals Reserve Company. Therefore, the only uncertain items of cost at East St. Louis are other expenses, accounting normally for only 25 percent of the cost of alumina. If these items are estimated to have cost the same as at Hurricane Creek, at Baton Rouge, the total estimated East St. Louis costs are \$30.16 to \$34.16 per short ton. The lower figure is more likely in view of the high rate of operation—83 percent of capacity during 1943, and the greater productive efficiency of management and labor in the Alcoa-owned plant.

Production costs at East St. Louis during 1944 were probably somewhat higher because of progressive decline in the grade of ore used.

Postwar costs depend on assumptions as to the grade of ore to be used. Alcoa reportedly controls most of the remaining high-grade ore in Arkansas, enough for some 5 years of capacity operations at East St. Louis. If, as is possible, the reported high-grade reserves have been understated, then East St. Louis could produce for a longer period. But the best costs would be considerably higher than at Mobile, between \$30.16 and \$34.16 per short ton, as compared with some \$7 costs at Mobile. If imported high-grade ore were used at East St. Louis, production costs would be somewhat higher, \$30.94 to \$35.94 per ton, including costs of ocean transportation. The use of medium-grade ore at East St. Louis would not be economical because 2½ tons would have to be shipped from Arkansas as against 1 ton of high-grade ore.

Obviously, the East St. Louis plant is in a marginal position, facing obsolescence because of lower production costs at Mobile and lower possible costs at Hurricane Creek.

4. *Mobile (Alcoa) plant.*—Wartime costs at Mobile are difficult to estimate because of the changing proportions of domestic and foreign ores that were used and the unknown net costs of ocean transportation after deducting profits of the Alcoa Steamship Co. under its charter arrangements with the War Shipping Administration. A reasonable estimate is that Mobile war time costs have ranged between \$25 and \$35 per ton. In the postwar period, if Alcoa's prewar costs of fluorinam bauxite and ocean transportation are restored, the table shows estimated costs at Mobile of \$23.83-\$28.64 per short ton, before deducting profits of the steamship company.

Hypothetical Costs of Producing Alumina at Different Plants, Various Bases of Assumption, Various Grades of Bauxite

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Item	DFC—Baton Rouge plant					DFC—Hurricane Creek plant		Alcoa, East St. Louis plant		Alcoa—Mobile plant
	Prewar basis, 1937		War basis, 1943	Postwar basis		Prewar basis, 1937	War basis, 1943	War basis, 1943	Postwar basis	Postwar basis
Bauxite:										
Source of bauxite	Surinam	Arkansas	Arkansas	Surinam	Arkansas	Arkansas	Arkansas	Arkansas	Surinam	Surinam
Percent alumina	59.0	59.0	59.0	57.0	57.0	59.0	59.0	59.0	57.0	57.0
Percent silica	2.0	7.0	7.0	4.0	10.0	7.0	7.0	7.0	4.0	4.0
Percent recoverable alumina	54.7	48.3	48.3	52.5	48.3	55.3	55.3	55.3	52.5	52.5
Bauxite per short ton of alumina, dry basis, long tons	1.522	1.545	1.593	1.507	1.595	1.505	1.545	1.590	1.507	1.507
Shipping weight of bauxite per short ton of alumina, wet or dry basis, long tons	Dry 1.533	Wet 2.070 ¹	Wet 2.070 ¹	Dry 1.507	Wet 2.481 ¹	Wet 2.070 ¹	Wet 2.070 ¹	Dry 1.500	Dry 1.507	Dry 1.507
Cost elements per long ton:										
Production cost or price, dry basis	\$2.75-\$3.20	\$2.25-\$2.80	\$3.10-\$6.10	\$2.75-\$3.20	\$4.00 ²	\$2.25-\$2.30	\$3.30-\$8.10	\$3.00 ³	\$2.75-\$3.30	\$2.75-\$3.30
Water transportation, without carrier profit	\$1.50-\$2.00			\$1.50-\$2.00					\$1.50-\$2.00	\$1.50-\$2.00
Water transportation with carrier profit	\$2.00 ⁴			\$2.00 ⁴					\$2.00 ⁴	\$2.00 ⁴
Handling charges	\$0.20 ⁵			\$0.20 ⁵					\$0.20 ⁵	\$0.20 ⁵
Rail transportation		\$3.31 ⁶	\$3.74 ⁶		\$3.74 ⁶			\$4.14 ⁶	\$3.30 ⁶	\$3.30 ⁶
Import duty	\$1.00			\$1.00 ⁷					\$4.00-\$4.14	\$1.00 ⁸
Total cost, delivered, without carrier profit									\$1.00 ⁸	\$1.00 ⁸
Per long ton bauxite	\$6.75-\$6.70	\$3.55-\$4.51	\$9.84-\$9.90	\$5.00-\$6.70	\$8.72	\$2.25-\$2.30	\$3.10-\$8.10	\$7.74	\$9.75-\$10.34	\$5.00-\$6.52
Per short ton of alumina	\$9.35-\$9.90	\$11.01-\$11.47	\$13.47-\$18.16	\$8.70-\$11.37	\$20.07	\$4.16-\$4.62	\$4.77-\$11.44	\$14.40	\$16.55-\$18.40	\$9.47-\$11.08
Total cost, delivered, with carrier profit										
Per long ton of bauxite	\$7.15-\$7.80			\$7.15-\$7.80					\$11.15-\$11.74	\$6.98-\$7.43
Per short ton of alumina	\$11.87-\$12.40			\$12.15-\$12.90					\$18.90-\$19.92	\$11.85-\$12.61

Alumina costs per pound:										
Bauxite, without carrier profit	0.408-0.527 ⁹	0.551-0.574 ⁹	0.574-0.909 ⁹	0.408-0.527 ⁹	1.000 ⁹	0.500-0.531 ⁹	0.507-0.574 ⁹	0.720 ⁹	0.536-0.536 ⁹	0.474-0.554 ⁹
Lime and soda ash	0.1444 ¹⁰	0.2376 ¹⁰	0.2376 ¹⁰	0.1924 ¹⁰	0.800 ¹⁰	0.2324 ¹⁰	0.3086 ¹⁰	0.3086 ¹⁰	0.2014 ¹⁰	0.2014 ¹⁰
Other expenses	0.004 ¹¹	0.004 ¹¹	0.004 ¹¹	0.004 ¹¹	0.004 ¹¹	0.416 ¹¹	0.416 ¹¹	0.416 ¹¹	0.40-0.604 ¹¹	0.40-0.604 ¹¹
Total, without carrier profit	1.213-1.294	1.489-1.514	1.611-1.894	1.281-1.294	2.1114	0.970-0.953	1.040-1.234	1.208-1.709	1.430-1.734	1.075-1.354
Total, with carrier profit	1.522-1.544			1.400-1.424					1.547-1.779	1.194-1.434
Alumina costs per short ton:										
Without carrier profit	\$24.35-\$24.52	\$29.76-\$30.32	\$32.22-\$37.92	\$25.62-\$27.34	\$42.32	\$19.40-\$19.86	\$20.00-\$25.08	\$30.16-\$34.16	\$28.56-\$34.42	\$21.80-\$27.10
With carrier profit	\$28.25-\$27.38			\$28.25-\$27.38					\$30.94-\$35.94	\$23.00-\$28.04
If import duty is eliminated after the war, deduct				\$1.70					\$1.70	\$1.70

¹ Actual grade used at Hurricane Creek, 1943.

² Unweighted monthly average grade of ore actually used in 1943, nearly all ore from Arkansas.

³ Wet weight assumed to be 10 percent greater than dry weight.

⁴ Estimated Alcoa cost. For domestic ore shipped wet, estimated drying charge of 30 cents deducted. For Surinam ore, \$1 duty included.

⁵ Metals Reserve Co., price for wet ore on dry basis, 1944.

⁶ Minimum figure is estimated Alcoa cost less 50 cents estimated drying cost. Maximum figure is Metals Reserve Co., purchase price, 1943, for wet ore on dry basis.

⁷ Estimated Alcoa cost.

⁸ Actual 1937 rate.

⁹ Estimated.

¹⁰ Actual cost.

¹¹ Estimated on basis of current rate, Bauxite, Arkansas to Baton Rouge, reduced to basis before the 10 percent rate increase in 1934.

¹² Actual rate including 2 percent Federal tax.

¹³ Actual rail rate including 3 percent Federal tax.

¹⁴ Assuming continuation of current import duty.

¹⁵ Computed on basis of cost or price of dry ore plus transportation cost of ore as actually shipped, dry or wet.

¹⁶ Computed by applying to 1943 average cost of lime and soda ash at Baton Rouge 0.40 cents per pound of alumina, the rate of silica shown at head of the column to 1943 average of silica at Baton Rouge, 4.51.

¹⁷ Computed by applying to 1943 average cost of lime and soda ash at Hurricane Creek 0.40 cents per pound of alumina, the rate of silica shown at head of the column to 1943 average of silica at Hurricane Creek, 35.35.

¹⁸ Costs of lime and soda ash are the same at East St. Louis and Hurricane Creek according to Thomas F. Price, Metals Reserve Co., "Report on Proposed Schedule of Prices for Bauxite Ore in Arkansas," May 11, 1943.

¹⁹ Actual average cost at Baton Rouge, 1943.

²⁰ Actual average cost of Hurricane Creek.

²¹ Information available does not indicate whether Hurricane Creek or Baton Rouge "other expenses" are similar to East St. Louis and Mobile. Both are shown.

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Appendix 11c

REPRESENTATIVE WARTIME COSTS AND POSSIBLE POST-WAR COSTS OF PRODUCTION AT THE MILL OF BIG ALUMINUM, GOVERNMENT PLANTS

This table and a full explanation of its derivation appear in a confidential report of the Bonneville Power Administration, Department of Interior, "Government Aluminum Plants: Production Costs and Postwar Prospects", February 16, 1945.

The Defense Plant Corporation received monthly figures of production costs from Alcoa and the Olin Corp., and annual audit reports by public accountants. The Alcoa-reported costs include all normal mill expenses plus transportation of metal to destination. Certain nonmill costs are excluded and are separately paid by DPC to Alcoa. They include an allowance for the general overhead of the Alcoa organization, interest at 3 percent on working capital supplied by Alcoa, and any Federal or State gross income taxes (exclusive of income taxes paid by Alcoa on its share of profits under the lease agreement). The Olin-reported costs include, besides all production costs, an allowance of 0.5 cents per pound for general overhead of the Olin Corporation and a management fee of 0.5 cents per pound.

Both monthly and annual averages of costs for each plant have been subject to serious limitations including (1) changes in labor efficiency accompanying the very high turn-over rates in the aluminum industry; (2) changes in rates of operation, involving heavy unit costs in the initial months of new production from a potline and the absorption of fairly constant overhead charges; (3) changes in power costs due to charges for power not taken or other special terms of power contracts; (4) adjustments for depreciation charges; and (5) monthly fluctuations in the amounts of transportation charges on metal shipped, according to variations in destination points.

Accordingly, it was necessary in preparing the table to examine the monthly cost record of each plant in the light of underlying conditions and to select certain periods or individual months which reflected the achievement of stable operations or came the closest to representing costs that might have been anticipated had a longer period of stable operations been achieved.

The estimated possible postwar costs are explained by the footnotes. Particular attention was given to the estimates of power and alumina costs, using figures derived elsewhere in the appendixes to this report. All other costs, except as indicated, were taken as the same as representative wartime costs, resulting in some overstatement of possible postwar costs.

The wartime costs of alumina should be noted. They are based on a price of \$50 per short ton, f. o. b. the Government plants at Baton Rouge or Hurricane Creek. This price is considerably in excess of the production cost at Hurricane Creek. In an integrated operation including Hurricane Creek and a reduction plant, the cost of alumina would be the mill cost plus overhead and transportation.

Representative Costs, 1943 and 1944, and Possible Future Costs of Production at the Mill of Pig Aluminum, Government Plants

Item	Massena, N. Y.	Jones Mills, Ark.	Rockport, Wash.	Trenton, Ore.	Trenton, Wash.	Los Angeles, Calif.	Riverbank, Calif.	Massena, N. Y.	Burlington, N. J.
ACTUAL COST PER POUND									
Period covered	12 months, 1943	12 months, 1943	12 months, 1943	April 1944	9 months, August 1943-April 1944	April 1944	April 1944	10 months, 1943	9 months, 1943
Annual plant capacity— millions of pounds	100	141	200	141	41	178	100	200	200
Monthly average production rate of capacity, approx- imate—percent	100	85 to 100	85 to 100	100	100	80	60	Varied to 100	Varied to 100
Kilowatt-hours consumed at the plant—per pound	2.9	2.6	2.6	2.9	2.4	2.1	2.3	2.6	2.7
Labor—cents	1.100	.900	1.000	1.300	2.800	1.400	1.300	1.200	1.000
Aluminum—cents	4.500	4.500	4.500	4.771	4.745	4.500	4.700	4.500	4.500
Power (at cost)—cents	0.915	1.200	1.912	2.020	1.947	4.117	4.000	4.000	4.000
Oryxite—cents	1.20	.10	.00	.10	.00	.00	.00	.00	.00
Aluminum fluoride—cents	1.500	.000	1.100	1.000	.000	.000	.000	.000	.000
Carbons—cents	1.500	1.000	1.200	1.000	.000	1.100	1.000	1.000	1.000
Other items—cents	.000	1.000	1.000	.075	0.004	1.700	1.000	1.000	1.000
Total average cost, in- cludes	16.104	12.000	11.300	11.307	10.570	12.000	14.000	10.900	10.700
Depreciation included in above costs—cents	.215	.000	.000	.000	0.000	.775	.000	.000	.000
Transportation of metal in- cluded in above costs—cents	4.610	4.500	4.300	4.300	None	0.500	0.000	4.500	4.300
Net average cost without trans- portation—cents	14.779	12.000	11.000	11.002	10.570	11.725	14.000	10.900	10.700
Net average cost without trans- portation and depreciation costs—cents	14.564	11.000	10.000	10.700	10.570	12.000	14.000	10.900	10.700
POSSIBLE FUTURE COSTS PER POUND									
Production rate of present ca- pacity—percent	100	85 or 100	100	100	100	80	60	100	100
Power—cents	1.075-1.000	1.000-1.100	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Aluminum—cents	2.000-2.700	2.100-2.100	2.000-2.000	2.100-2.000	2.000-2.000	2.100-2.000	2.000-2.000	2.000	2.000

See footnote at end of table, p. 112.

Representative Costs, 1943 and 1944, and Possible Postwar Costs of Production at the Mill of Pig Aluminum, Government Plants—Con.

Item	Massena, N. Y.	Jones Mills, Ark.	Spokane, Wash.	Troutdale, Oreg.	Tacoma, Wash.	Los Angeles, Calif.	Riverbank, Calif.	Maspeth, N. Y.	Burlington, N. Y.
POSSIBILITIES FOR COST PER POUND—continued									
All other items exactly as above exclusive of transportation cost—cents	3.737	11 1.003-2.404	2.618	2.540	17 4.617	4.025	4.451	4.405	5.385
Total average cost do.	8.307-9.348	8.180 or 9.721	8.817-9.332	8.930-9.354	10.610-10.631	10.162-10.619	11.300-11.875	12.166	14.005
Depreciation included in above, cents	.818	0.623 or .634	.561	.625	.780	.773	.604	.415	.623
Net average cost without depreciation—cents	7.489-8.530	7.527 or 8.787	8.236-8.751	7.907-8.681	9.288-8.781	9.390-10.047	10.696-11.871	12.751	12.168

- 1 See power appendix.
 2 Consumption of energy for 1943.
 3 Includes 1 cent paid to Olin Corporation for general overhead costs and management fee but excludes depreciation and transportation charges on metal.
 4 Depreciation may be estimated at 0.75 cent per pound based on the plant investment of \$6 million, 20-year amortization, and 41 million pounds of metal per year.
 5 Computed from data in letter from M. M. Schrats, auditor, Alcoa, to Sam H. Hubbard, President, DFC, Jan. 2, 1945.
 6 Letter, M. M. Schrats, auditor, Alcoa, to T. W. Atkins, DFC, Aug. 2, 1944.
 7 Operation feasible only by Alcoa at present.
 8 Each power estimate assumes use of 9 kilowatt-hours per pound. Power costs are postwar estimates shown in the power appendix.
 9 Only if St. Lawrence project power is available (1.75 mills per kilowatt-hour or Canadian imports (2.1 mills per kilowatt-hour). See power appendix.
 10 Higher power cost assumes completion of steam plant and includes depreciation on that plant but excludes depreciation on diesel engines which is included in total allowance for depreciation. Lower cost is based on diesel engines only.
 11 Assuming 2 pounds of alumina per pound of aluminum.
 12 Minimum is lowest estimate for alumina from Mobile, assuming Alcoa operation of the Massena plant. Maximum is for Hurricane Creek alumina, assuming independent operation of the Massena plant. This estimate is also close to the maximum estimate for Mobile alumina.

- 13 Alumina produced at Hurricane Creek.
 14 Minimum is based on alumina produced at Columbia River tidewater plant; maximum is based on Hurricane Creek alumina.
 15 Minimum is based on alumina produced at Los Angeles; maximum is based on Hurricane Creek.
 16 Depreciation is included in lower figure at two-thirds of full amount for 1943 on the assumptions of operation at half capacity, a full allowance for depreciation only on general plant facilities, and an allowance for depreciation on half of the direct production facilities.
 17 Excludes management and overhead charges of 1 cent. An engineering study should disclose possibilities of substantial reductions in costs of these items; perhaps 50 percent on labor, or 1.25 cents; on cryolite and aluminum fluoride, about 1/4 cent to bring costs nearer to Troutdale and Spokane levels on carbons, 1/4 cent; and additional savings of about 1/4 cent on management and overhead expenses, for a total of about 2.63 cents. These savings are estimated from a discussion with persons familiar with operations in the plant, including a former foreman.

Appendix 16

GOVERNMENTAL WARTIME ASSISTANCE TO THE ALUMINUM COMPANY OF CANADA, SUBSIDIARY OF ALUMINUM LTD. (ALTED)

Plant investment of the Aluminum Co. of Canada for war purposes for which special depreciation was allowed amounted to about \$193,000,000. This included about \$70,000,000 for the Shipshaw power development and \$123,850,000 for production plant and machinery. By arrangement with the Canadian government, 60 percent of the cost of the power project or \$41,250,000, was written off against profits during 4½ years, and all of the \$123,850,000.¹

The company obtained from foreign governments advances on purchases of aluminum of nearly \$80,000,000 and loans of nearly \$90,000,000 including lines of credit. This assistance comprised advances on purchases of metal of \$68,500,000 by the Metals Reserve Company (Reconstruction Finance Corporation); \$10 to \$12 millions by Great Britain; \$3 to \$5 millions by Australia; a line of credit from the Export-Import Bank of the United States which protected outstanding bank loans of \$30 millions as of December 3, 1943; and loans by Great Britain aggregating \$55,000,000.² The Metals Reserve Company contracted for deliveries of 1,370,000,000 pounds during 1941-45. The base purchase price on the advances, 17 cents per pound, was initially the same as the price in the United States but was subject to very liberal escalator allowances for more than actual increases in major items of cost due to the war. In October 1941 the American price dropped to 15 cents but the Canadian company granted only a partial reduction in its base price. The actual average cost of the Canadian metal to this country was 18.6 cents as compared with the American price during 1942-45 of 15 cents and 14 cents. This difference meant an extra cost of over \$35 millions on deliveries from 1941 through 1944. If the United States had cancelled the contract at any time, the unrepaid portion of the advance would also have been cancelled, and the Metals Reserve Company would have been subject to an additional penalty charge of 1 cent per pound for all unaccepted metal. The British loan was repayable over 20 years with annual abatements directly proportional to the extent that no use was made of the facilities built to meet British needs.

The other terms of the Metals Reserve Company advance were also very liberal. The first advance was \$25 millions at 2 percent (May 2, 1941); the second advance was \$25 millions (July 15, 1941); the two advances were consolidated into a non-interest bearing advance on March 6, 1942, supplemented by a line of credit through the Export-Import Bank up to \$25 millions with interest at 3 percent; and the last advance was \$18,500,000 on April 1, 1942, supplemented with an additional line of credit up to \$9,250,000 with interest at 3 percent. Criticism of these arrangements led to a revision of the contracts in 1943 under which an interest charge of 3 percent was imposed retroactively on all advances.

The terms of American participation in this Canadian program were reviewed by the Truman Committee of the Senate (see footnote 2) and by the Senate Small Business Committee.³

¹ Canadian House of Commons, Votes and Proceedings No. 123, January 26, 1944, p. 744.

² Canadian House of Commons Debates, March 22, 1943, p. 1423, Moody's Industrials, 1944, and Assassination of the National Defense Program, Senate Report No. 15, part 14, 75th Cong., 2d Sess., pp. 62-72.

³ Hearings on Problems of American Small Business, 75th Congress, Parts 57 and 58, The Shipshaw Contract, I and II.

Appendix 17

THE AUTOMOBILE INDUSTRY AND ALUMINUM

The following material is taken from the Brief for the United States, *United States of America v. Aluminum Company of America et al.*, pages 190-198. The names of witnesses and numbers after their names refer to pages in the court record.

The economic validity of the principle of competition upon which the Sherman Act is grounded is demonstrated by the effect of Alcoa's monopolistic position in the aluminum industry. The existence of the monopoly has restrained the use of aluminum for purposes for which its physical properties render it peculiarly suitable. To a considerable degree the public has been deprived of a useful commodity because of the very fact that it is the subject of monopolistic control.

The ideal of competition is no mere academic concept. It finds its most convincing recognition among businessmen actively engaged in commercial pursuits. Charles W. Nash, chairman of the board of directors of the corporation producing Nash automobiles (Nash 6259-60), expressed the view that competition is "the life of business" (Nash 6375). Markey, vice president and general manager of the Bohn Aluminum and Brass Company (Markey 24,542-3), enumerated the practical advantages of competition in industry. It encourages the development of technique in the manufacturing process and is responsible for improvement in service (Markey 24,733-4). It affords a more intensive development of sales of a manufactured article and encourages a wider application of the product to varied uses (Markey 24,754). Moreover, the existence of competition affords the consumer a guaranty of the continuance of good service and operates to reduce prices (Markey 24,797, 24,783). In short, a state of competition in industry directly increases the flow of goods and services in commerce. An example may be found in the aircraft industry. Eugene E. Wilson, president of the United Aircraft Corporation, expressed the opinion that the existence of competition among producers of aircraft has influenced the progress of that industry (E. E. Wilson 35,359, 35,413-4). Likewise, in the automobile industry, where competition is very keen, "every manufacturer of automobiles has strived to see how cheaply they could get an automobile into the hands of the user, believing that the volume would be to their advantage" (Nash 6289).

The positive advantage of competition is reflected in the policy of manufacturers in requiring two or more sources of supply of materials purchased. As stated by Nash, "I think nearly every large manufacturer attempts to have two sources of supply" (6274). Similarly William B. Mayo, formerly chief engineer of the Ford Motor Company and presently a director of the United Aircraft Corporation (Mayo 6496-7), asserted that "our method was always to have two or three sources if possible," explaining that "It is quite evident I think, when you have two or three sources you are apt to get a better price than if you have only one" (6513-4).¹ This view was expressed

¹ So firmly did the Ford Company believe in the advantage of two sources of supply that it continued engaging in the manufacture of aluminum. As stated by Mayo, "We were always studying" the question of establishing an independent source of aluminum (6513). In 1930 or 1931 Ford made "quite an effort" to obtain Muscle Shoals from the government "to develop an aluminum plant" (Mayo 6496-6500). For a further discussion of Ford's efforts to obtain an independent source of aluminum see pp. 224-5, 494.

by a host of witnesses engaged in a number of industries.³ In the case of virgin aluminum no manufacturer can obtain two domestic sources of supply. Even the vital aircraft industry, so essential to national defense, is entirely dependent upon Alcoa for its most essential material.⁴

Alcoa itself is fully cognizant of the advantage of competition wherever its own monopolistic position is not involved. Roy A. Hunt, its president, stated that "I think competition is a good thing" (21,822). When Alcoa buys raw materials it wants competition among the suppliers and desires more than one source of supply in order to provide that competition (Hunt 22,467; Gibbons 23,067-8). However, Alcoa is entirely unwilling to extend that principle to its own operations. Hunt expressed doubt whether "it would do any particular good" if another organization were to engage in the manufacture of aluminum in the United States in competition with Alcoa, adding that "I would not go out of my way to encourage anyone to go into the business" (21,822-3). Although Davis conceded that additional manufacturers might enter the aluminum fabricating field if they had a second source of supply, he argued for the retention of Alcoa's monopoly on the theory that "no company that is half the size can operate as well as a company that is twice the size" (A. V. Davis, 20,836, 20,888). In other words, even if the aluminum industry in the United States were to expand to twice its present size, Davis would still contend that it should be monopolized by Alcoa. Quite obviously its officers entertain the belief that Alcoa occupies an omnipotent station which renders it immune to economic principles and considerations of public policy applicable to industrial organizations of common clay.⁴

Just as competition fosters trade, monopoly curtails commerce. The mere fact of Alcoa's monopoly, apart from any overt acts of repression, has operated to diminish the volume of trade in aluminum and aluminum products in the United States. Markey has held the opinion that the existence of only one producer of aluminum has deterred some consumers from purchasing that commodity, and that to that extent Alcoa's dominant position has retarded the growth of the aluminum industry (Markey 24,696-7).

A striking example may be found in the effect of monopoly upon the utilization of aluminum in the automobile industry. By reason of its physical

³ Additional witnesses who confirmed this opinion include J. H. Main, formerly coordinator of purchases of General Motors Corporation (Main 4313-5); F. H. Diehl, formerly director of purchases of Ford Motor Company (Diehl 6544, 6559); W. A. Hastings, chairman of the board of directors of Aluminum Products Company (Hastings 11,344, 11,357-8); J. J. Geraghty, president of the Johnston Thrift and Metal Company (Geraghty 23,393, 23,395-6); E. S. Damon, vice president in charge of operations of American Airlines, Inc. (Damon 25,003, 25,013-4, 25,031-3); W. M. Jeffers, president of the Union Pacific Railroad (Jeffers 25,728, 25,730-30); B. C. Ziegler, president of the West Bend Aluminum Company (Ziegler 21,893-4, 21,895-6); Commander J. C. Hummer, consulting engineer to United Aircraft Corporation (Hummer 22,541, 22,543); Glenn L. Martin, president of the Glenn L. Martin Company (Martin 24,594, 24,713-4); and E. E. Wilson, president of United Aircraft Corporation (E. E. Wilson 24,323, 24,393-4, 24,413-4, 24,431-3).

⁴ There is a tremendous demand for aluminum in the aircraft industry, which is vital to national defense (Martin 24,631-2; E. E. Wilson 24,337, 24,431, 24,432-3). Since approximately 95% of the material in an airplane is aluminum, that demand will continue to increase with the anticipated great expansion of airplane production in the United States (Martin 24,701-2; E. E. Wilson 24,433, 24,435-6). Aircraft manufacturers state that Alcoa is the only source from which they can obtain aluminum and aluminum alloys (E. E. Wilson 24,403; Martin 24,703, 24,714; Hummer 22,541; Van Dusen 22,511). There are no substitute materials to which they can resort in an effort to obtain two sources of supply. Strength and lightness are major factors in airplane construction (Van Dusen 22,523-4). Although aircraft producers have tested many other metals and materials, aluminum is regarded as essential in building airplanes (Van Dusen 22,493-4, 22,477-8).

⁵ Alcoa's conduct during the 50-year years of its existence establishes beyond question that it not only has held this view, but has acted upon that premise to preserve its status in the aluminum industry. See Point II of this brief, *supra*.

properties aluminum is a very satisfactory material for use in automobile parts (Nash 6270-1). It is very strong and very light (Nash 6271). It weighs approximately one-third as much as iron and when used in the form of an alloy it is stronger than iron (Gibbons 23,982-3, 23,971). Light weight "is a very important factor in the construction of an automobile" because "it requires less power to propel an automobile weighing 2,000 pounds than it does one weighing 3,000 pounds" and therefore "it cuts down the consumption of gasoline and the cost of operation" (Nash 6371; Diehl 6553-4). The use of light metal diminishes the amount of wear of an automobile in operation (Diehl 6553-4). Moreover, aluminum is "cheaper to mould and cheaper to machine" than other metals (Nash 6271). From the time it began the production of motor cars the Ford Motor Company used large quantities of aluminum, and by 1915 it was believed to be the largest single consumer of that metal in the United States (Diehl 6544-5). Diehl, who was director of purchases of the Ford Company from 1911 to 1923 (Diehl 6544), explained that "It has always been the policy of Mr. Ford to make a light car and he was always very glad to use aluminum wherever he could" (Diehl 6552A). Similarly the General Motors Corporation used large quantities of aluminum in its cars prior to 1915 (Nash 6270-2).

The year 1915 marked the beginning of a drastic trend away from the use of aluminum in the automobile industry—a trend directly attributable to Alcoa's monopolistic position and the arbitrary policies which were the concomitant of that status. In the summer of that year Nash, who was then president of General Motors, complained to E. K. Davis, Alcoa's vice-president in charge of sales, that Alcoa had virtually doubled the price of aluminum in a short time (Nash 6260-4). Nash regarded the increase as unwarranted, and stated that if Alcoa "had any competition . . . [it] would not raise the price so severely" (Nash 6264-5). He pointed out that Alcoa was the sole source of supply of aluminum and that he was compelled to pay whatever "they might exact from us" (Nash 6266). He expressed the view that Alcoa was taking "undue advantage" of its position (Nash 6266). Nash added that "the automobile industry was using a large tonnage of aluminum" and that Davis was "making a serious mistake" because Alcoa would force automobile manufacturers to work out some substitute for aluminum (Nash 6265). If this were done, he asserted, Alcoa would never again sell large quantities of aluminum to the motor car industry (Nash 6266). Nevertheless Davis adhered to Alcoa's increased price (Nash 6267).

This conduct by Alcoa had precisely the effect predicted by Nash. After the conference Nash explained the situation to his engineers and instructed them "to see what they could do about working out substitutes for the use of aluminum" (Nash 6269). As a result General Motors proceeded rapidly to substitute other metals in the production of automobile parts theretofore made of aluminum (Nash 6269-70). Prior to 1915 approximately 75 pounds of aluminum were used in each car manufactured by General Motors; thereafter it succeeded in producing automobiles which contained no aluminum whatever (Nash 6271-2). Nash explained that the use of aluminum was abandoned because he felt that General Motors had been treated unjustly and because "I thought if we got into the use of it again . . . the same thing might arise again" (Nash 6272).

This action by Alcoa was also responsible for its loss of the patronage of the Ford Motor Company in 1915. In the summer of that year Alcoa ad-

* Cadillac, Buick, Oldsmobile, Oakland, Carter, General Motors Truck and vehicles produced by Buickway Motor Company (Nash 6271).

vanced the price of sheet aluminum used by the Michigan Stamping Company, which produced aluminum hoods used on Ford cars, from 22¢ to 35¢ per pound (Diehl 6546-7). Thereupon Diehl, director of purchases of Ford, conferred with E. K. Davis (Diehl 6544, 6546). In response to Diehl's expression of displeasure, Davis stated simply that "the price was 35 cents a pound" (Diehl 6547). At the same time Diehl was informed that the price paid by the Ford Company for aluminum ingot was to be advanced from 18¢ to 30¢ per pound (Diehl 6545-8). Diehl expressed the opinion that "it was outlandish to raise the price that much" because he "could not see any cause for it" (Diehl 6550). He informed Davis that the Ford Company was "going to get busy and get away from these drastic increases" by the use of "some other material" (Diehl 6547-8).

In less than two weeks after this conference the Ford Company had abandoned aluminum hoods and was using steel instead. (Diehl 6551). Never again did Ford ever use aluminum hoods (Diehl 6551). The substitution of other metals for other parts of the Ford car required the manufacture of new dies, tools and fixtures, but in six months the Ford Company had accomplished the change and had adopted cast iron to supplant aluminum in those parts (Diehl 6551-2, 6554). From that time until 1922 no aluminum was used in Ford Cars (Diehl 6554).

Ford's later experience from 1922 to 1924 demonstrates the wisdom of Nash's determination to avoid the use of aluminum because "the same thing might happen again" (Nash 6272). In 1922 Ford introduced a new type of automobile body—a four-door sedan—using sheet aluminum for the entire outer surface of the body (Diehl 6554). These bodies were made by the Edward G. Budd Manufacturing Company, which also made aluminum automobile bodies for the Briggs Manufacturing Company (Mueller 13,376-7; Diehl 6554). In 1924 Alcoa advanced the price, and Budd received instructions from both the Ford and Briggs companies to discontinue the use of aluminum (Mueller 13,494; Diehl 6554-5). Otto Mueller, general purchasing agent and later plant manager of the Budd Company, went to Pittsburgh to protest against the increase (Mueller 13,373, 13,506, 13,514). He obtained an interview with Arthur V. Davis and told him that Budd's customers considered the increase unjustified and "were dissatisfied with these continual advances and that the price had, in all probability, reached an uneconomical figure" (Mueller 13,518-9, 13,514). Davis "was emphatic in his statements that he would not on any consideration reduce the price" (Mueller 13,515). Mueller proceeded to Detroit under instructions from Budd to report the result of his discussion with Davis to Henry Ford (Mueller 13,515, 13,529). The Ford people expressed "great dissatisfaction" (Mueller 13,516-7).

The Budd Company sought to obtain aluminum for the Ford and Briggs automobile bodies from other sources (Mueller 13,532). It went so far as to negotiate with a steel company—the Allegheny Steel Corporation—to determine the practicability of equipping one of the Allegheny Steel plants to roll aluminum sheet (Mueller 13,543-4). This prompted Davis to express himself as being "resentful" at the Allegheny Steel Corporation's "effort to get into the aluminum business" (Mueller 13,551-3). There was no other suitable source from which the Budd Company "could obtain the aluminum sheet required by it for its automobile body manufacturing operations" (Mueller 13,494, 13,497), and after June 30, 1924, the Budd Company discontinued the use of aluminum in its automobile bodies (Mueller 13,494). Ford thereafter turned to the use of steel bodies (Diehl 6555).

In 1916 Nash organized the Nash Motors Company, which began the manufacture of Nash automobiles (Nash 6273). In this venture he adhered to his previously determined policy of avoiding the use of aluminum wherever possible by instructing his engineers "not to use a pound [of aluminum] if we could avoid it" (Nash 6273). For a number of years no aluminum was used in the construction of Nash cars (Nash 6273). While pistons and a number of small parts of Nash automobiles are presently made of aluminum, that metal has never been used in any large parts (Nash 6273-4).

Alcoa's position also was responsible for the discontinuance of the use of aluminum by the Studebaker Corporation. In 1924 A. R. Erskine, president of that company,⁴ informed Laurence J. Harwood, whose company had theretofore supplied aluminum castings to Studebaker, that Studebaker had decided not to use aluminum in its cars (Harwood 4476-9; 4483). That determination was motivated by Erskine's desire not to use any material which was not sold competitively (Harwood 4479). In answer to Harwood's assertion that he competed with others, Erskine replied: "you only think you are in business," adding "You are simply buying aluminum from one source now, and you cannot buy elsewhere, and if we can't make an automobile that is made of parts that are competitive we will probably quit making automobiles, and orders have gone to our engineers to that effect" (Harwood 4480). Thereafter Harwood's sales of aluminum castings to Studebaker ceased as soon as substitutes for aluminum parts could be arranged (Harwood 4481). The use of aluminum in the Studebaker automobiles declined from a previous maximum of approximately 110 pounds per car to virtually no aluminum whatever (Harwood 4475). In 1924, the year in which Erskine adopted this policy, Studebaker used approximately 6,000,000 pounds of aluminum castings (Peterson 31,479). At present there are no aluminum castings in the Studebaker car (Peterson 31,327).

The general abandonment of the use of aluminum in the automotive industry, therefore, can be traced directly to Alcoa's monopolistic position. Aluminum castings are now seldom used in pleasure cars (Stag 25, 245-6). The chief item for which aluminum is used presently in the production of automobiles is that of pistons, which do not constitute an important element of cost (Nash 6267-8). Moreover, the use of aluminum in pistons is influenced by the desirable physical properties of the metal, which render it difficult to substitute other materials. Aluminum pistons "are much better than cast iron" (Nash 6268).⁵

It cannot be questioned that Alcoa's monopoly has diminished substantially the sale of aluminum in interstate commerce for use in the automotive industry. In 1937 more than 4,000,000 passenger cars were sold (Ra. 837). If each of these automobiles had contained only 30 more pounds of aluminum,⁶ the aggregate sales of aluminum would have been increased by more than 120,000,000 pounds, which is more than Alcoa's entire production of virgin aluminum ingot in 1937 (Alcoa Int. 9 (c)). The final answer to the alleged efficiencies of monopoly, therefore, is found in the suppression of trade and commerce which is the inevitable incident of monopoly.

⁴ Erskine is deceased (Peterson 31,482).

⁵ Aluminum is preferable to cast iron or steel in the manufacture of pistons because (1) aluminum is lighter, and (2) it expands and contracts more rapidly (Tribute 14,764-5; Chaffin 3287). In the operation of the motor the pistons move and change direction of motion very rapidly (Tribute 14,764-5). It is very desirable that the pistons be as light as possible because wear is thereby reduced, enabling the use of higher engine speeds without undue wear on the engine parts (Peterson 3297-8). The use of higher engine speeds permits the development of greater power (Chaffin 3288). The greater heat conductivity of aluminum pistons permits more power to be produced in an engine of a given size (Tribute 14,764; Chaffin 3287-8).

⁶ At one time each Buick car contained as much as 50 pounds of aluminum castings (Harwood 4476).

Appendix 18

ESTIMATED WORLD BAUXITE RESERVES BY COUNTRIES AND ZONES

(In metric tons)

Country	Reserves	Percent total	Percent Al ₂ O ₃	Nationality of capital control (in percent)
Zone 1				
Western Hemisphere: 1				
United States	35,000,000	2.2	60-65	United States 100.
British Guiana	55,000,000	3.1	50-61	United States 15%; Canadian 85.
Dutch Guiana	54,000,000	3.1	50-58	United States 85%; Dutch 15.
Jamaica	70,000,000	4.4	45-50	United States 15%; Canadian 85.
Brazil	40,000,000	2.5	50-60	Brazil 100.
Haiti	5,000,000	.3	45-50	United States 100. ²
Dominican Republic	2,000,000	.2	45-50	(7).
Total Zone 1	274,000,000	25.9		
Zone 2				
European:				
France	85,000,000	4.7	50-58	French 40; Swiss 20; British 20; Canadian 20. ⁴
British Isles	N. A.	.9	Low Grade	British 100.
Italy	15,000,000	1.6	45-55	Canadian 35%; Italian 25; Swiss, German, and Hungarian-Swiss 40.
Hungary	150,000,000	14.2	50-57	German 50; Hungarian-Swiss 20.
Spain	500,000		55-58	Spanish 100.
Yugoslavia	15,000,000	1.4	45-55	Canadian 20%; German 20; Yugoslavia 60.
Romania	20,000,000	1.9	55-58	German-Hungarian-Swiss (7).
Greece	20,000,000	2.4	55-57	Canadian 35%; Greek 65.
Total zone 2	277,000,000	26.2		
Zone 3				
African:				
Gold Coast	60,000,000	7.6	45-55	British 100.
Mozambique	15,000,000	.9	45-55	British 100.
French West Africa	120,000,000	9.3	50-55	Canadian 30%; French 60.
Nyasaland	60,000,000	5.7	45-55	British 100.
Total zone 3	255,000,000	23.7		
Zone 4				
Russia:				
U. S. S. R.	20,000,000	2.6	50-55	Russian 100.

¹ In addition to countries listed, bauxite is reported to have been found in French Guiana, Venezuela, Colombia, Mexico, Nicaragua, El Salvador, and Cuba.

² Based on maximum of 15 percent silica. Suitable for Combination Process. Includes an estimated 5 to 7 million tons of low silica ore.

³ Hercules Mine—American Cyanamid & Chemical Corp.

⁴ Aluminum Ltd.—Estimated capital control in 1955—U. S. 60; Canadian-American 40.

⁵ Surinam properties—Republic Mining & Manufacturing Co.

⁶ Biliton Mine—N. V. Biliton Maatschappij.

⁷ Some estimates as high as 150 million tons.

⁸ Reynolds Metals Co.

⁹ Reynolds Metals Co. is reported to have extensive reserves.

¹⁰ Readily available, probably exceeds 200 million.

¹¹ German dominated—100-150 million additional geologically possible.

¹² German dominated—an additional 50 million geologically possible.

¹³ Reported to be very preliminary ore.

¹⁴ Some estimates as high as 200 million.

¹⁵ Approximately 5 million tons possible grade; balance high in silica.

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Estimated World Bauxite Reserves by Countries and Zones—Continued

[In metric tons]

Country	Reserves	Percent total	Percent Al_2O_3	Nationality of capital control (in percent)
Zone 5				
Far East:				
India.....	19,000,000	1.8	60-68	British 35; British-Canadian 35; ¹¹ Indian 30.
Netherland Indies ¹²	25,000,000	2.3	53-56	Dutch 100.
British Malaya.....	8,000,000	.6	54-60	Mixed Malayan, Canadian-Chinese-Japanese.
Japanese Mandated Islands.....	¹³ 5,000,000	.5	53-56	(?).
Australia.....	25,000,000	2.4	35-50	Australian 100.
China.....	150,000,000	14.2	45-55	Chinese 100.
Total zone 5.....	239,000,000	21.7		
Total estimated world reserves.....	1,056,000,000	100.0		

¹⁰ See footnote 4.¹¹ Prewar, the Dutch were considering building up an integrated industry.¹² Palau deposits—other of the islands Ponape, Yap, etc., may contain deposits of bauxite—these islands being held under a mandate there may be some question of their disposition after the war.

Source: War Production Board; The Special Aluminum Committee, "The World Aluminum Industry," April 1945, p. 105.

Appendix 19

COMMUNICATIONS DEALING WITH CANCELLATION
OF ALCOA LEASE, AUGUST 30, 1945RECONSTRUCTION FINANCE CORPORATION,
WASHINGTON, D. C., August 30, 1945.

[Registered mail, return receipt requested]

ALUMINUM COMPANY OF AMERICA
Pittsburgh, Pa.

(Attention Mr. I. W. Wilson, Vice President.)

Re: Plancor 226. Notice of Termination of Lease.

GENTLEMEN: It having been determined from the production figures which you furnished that the average production of aluminum for the 6-month period ending July 31, 1945, in the plants leased to you pursuant to the Agreement of Lease of August 19, 1941, as supplemented, was less than 40 percent of the aggregate "productive capacity", of such leased plants, notice is hereby given, pursuant to paragraph 13 of Agreement of Lease dated August 19, 1941, that the Agreement of Lease, as supplemented, shall terminate as of midnight October 31, 1945.

The plants affected by this notice of termination are the aluminum reduction plants and related facilities at Jones Mills, Ark.; Los Angeles, Calif.; Massena, N. Y.; Spokane, Wash.; Troutdale, Oreg., and the alumina plants and related facilities at Hurricane Creek, Ark., and Baton Rouge, La.

The termination of the Agreement of Lease, as supplemented, with respect to these plants, and the notice now given is without prejudice to any right or claim that may be now or hereafter asserted by Reconstruction Finance Corporation against Alcoa arising out of said Agreement of Lease, as supplemented, or arising out of the right, title, or interest of Reconstruction Finance Corporation in and to the site, buildings, machinery, and equipment of said plants under said Agreement of Lease, as supplemented, or to any property acquired with funds of Reconstruction Finance Corporation in connection with said Agreement of Lease, as supplemented, applicable to said plants and otherwise during the period Alcoa was in possession and control of such plants or any portion thereof.

Notwithstanding this notice of termination, and in order to assist in providing continued employment for aluminum workers until arrangements are made for the disposition of these plants in accordance with the Surplus Property Act of 1944, offer is hereby made to Alcoa to permit Alcoa to continue to lease any or all of the plants affected by this notice for a period of 1 year commencing September 1, 1945, and ending August 31, 1946, upon the same terms and conditions as set forth in the Agreement of Lease, as supplemented, except that the provisions of paragraph 13 of the Agreement of Lease dated August 19, 1941, regarding regulation of production shall be waived in their entirety and deemed to be of no further force and effect, and in lieu thereof, either party, by giving to the other 60 days' written notice, may terminate the continued lease with respect to any plant or plants as to which this offer is accepted at any time during such year.

You may accept this offer by executing the legend on and returning the executed counterpart of this letter which will constitute the lease to Alcoa of the plant or plants indicated in your acceptance for the period ending August 31, 1946, upon the same terms and conditions as contained in the Agreement of Lease, as supplemented, except as further modified and changed as herein set forth.

With respect to any plant or plants for which the offer herein made is not accepted (a) you will be required to yield and place this Corporation in peaceful possession on November 1, 1945, free and clear of any liens and claims other than those for which this Corporation is legally liable, (b) you may remove any property not belonging to this Corporation and which Alcoa owns and is entitled to possess free and clear of any liens or claims of this Corporation, (c) you will not be required to continue the insurance coverage beyond midnight October 31, 1945, the effective date of the termination, and prorated cancellation of such insurance coverage, if any, provided by you for this Corporation's protection may be arranged accordingly, and (d) this Corporation will arrange to take over complete custody and possession of any such plant or plants on November 1, 1945. This is not, however, to be construed as a release of Alcoa from accountability with respect to such plants while Alcoa was in possession and control thereof.

We would appreciate prompt acknowledgment of this termination notice, and advice with respect to the offer made herein for the continuance of the lease of any or all of said plants for a term ending August 31, 1946, upon the same terms and conditions as contained in the Agreement of Lease, as supplemented, and as further modified and amended as herein set forth.

Very truly yours,

(Signed) A. T. HOBSON,
Secretary.

We accept this _____ day of _____, 1945, the above offer of lease as to all plants referred to in the foregoing except _____

ALUMINUM COMPANY OF AMERICA,
By _____

Attests:

Secretary.

[Copy]

ALUMINUM COMPANY OF AMERICA,
605 SOUTHERN BUILDING,
WASHINGTON, D. C., September 6, 1945.

RECONSTRUCTION FINANCE CORPORATION,
Washington, D. C.

(Attention Mr. A. T. Hobson, Secretary)

Re: Flancor 236.

GENTLEMEN: We acknowledge receipt of your notice of August 30, 1945, terminating as of October 31, 1945, the Agreement of Lease of August 19, 1941, as supplemented, covering the aluminum reduction plants and related facilities at Jones Mills, Ark.; Los Angeles, Calif.; Massena, N. Y.; Spokane, Wash.; Troutdale, Oreg.; and the alumina plants and related facilities at Hurricane Creek, Ark.; and Baton Rouge, La.

We built the above plants without any profit to ourselves and have operated them to the financial benefit of the Government. We take real satisfaction in the knowledge that the aluminum we produced was a major factor in the building of our great war machine that brought us victory.

We accept your decision to terminate the said Agreement of Lease, as supplemented. Although the time allowed us is unduly short in view of the number of plants involved, we will forthwith notify the managements of these plants to proceed promptly and with due diligence with the end in view of removing our property from the plants in accordance with the terms of the Lease, and we will on November 1, 1945, place your Corporation in possession of the leased premises.

As to your offer to lease to Alcoa for 1 year, any or all of the plants, subject to termination on 60 days' notice, such a lease would be in fact a 60-day lease and would leave our company in such an impracticable operating position that we cannot enter into any such arrangement.

Assuring you of our continued desire to cooperate with you, we remain

Yours very truly,

ALUMINUM COMPANY OF AMERICA,
(Signed) ARTHUR P. HALL, Assistant Secretary.

[Immediate Release—RFC-2303]

RECONSTRUCTION FINANCE CORPORATION,
Washington, September 7, 1945.

The Reconstruction Finance Corporation announced today that it had terminated its lease agreement with the Aluminum Co. of America, effective midnight October 31, 1945, with respect to the aluminum reduction plants and related facilities at Jones Mills, Ark.; Los Angeles, Calif.; Massena, N. Y.; Spokane, Wash.; Troutdale, Oreg., and the alumina plants at Hurricane Creek, Ark., and Baton Rouge, La.

This action, it was stated, was taken on the recommendation of the Surplus Property Board. Under the lease, Alcoa would have been in control of the plants until various dates late in 1947 and through 1948. It would, therefore, have been impossible to make immediate arrangement for the sale or lease of the plants to others so long as the lease was in effect. The lease was terminated for the purpose of freeing the plants from the Alcoa agreement so that they could be disposed of in a manner which would create competition in the aluminum industry. The Government agencies concerned have taken this course in an effort to conform to the recent decision of the United States Circuit Court of Appeals for the Second Circuit and to provide additional sources of supply of this material so essential to the national security.

RFC released the attached letter addressed to Arthur V. Davis, Chairman of Alcoa, and which accompanied the notice of termination.

The notice of termination sent to Alcoa offered to make an arrangement whereby Alcoa would be permitted to continue to operate any or all of the plants for one year, commencing September 1, 1945, upon the terms and conditions of the existing lease, except that the arrangement could be terminated on 60 days' written notice of either party. This offer was made in the hope that in the interests of maintaining employment it would be possible to arrange for the operation of the plants by Alcoa on a temporary basis. Alcoa has informed representatives of the RFC that it is not interested in making an arrangement of any kind for the temporary operation of these plants.

RECONSTRUCTION FINANCE CORPORATION,
Washington 25, D. C., August 30, 1945.

Mr. ARTHUR V. DAVIS,
Chairman of the Board,
Aluminum Company of America, Pittsburgh, Pa.

DEAR Mr. DAVIS: This is to confirm the following statements made orally today when I handed Mr. Arthur Hall, your Washington representative, an executed duplicate copy of the enclosed notice of termination of RFC's Agreement of Lease dated August 19, 1941, with the Aluminum Company of America covering certain aluminum reduction plants and certain alumina plants:

1. Because of the time element we are giving the notice of termination now for the purpose of protecting and preserving what we think are our legal rights under the contract.

2. We are perfectly willing and indeed are anxious to discuss the matter with you and your attorneys and if possible to adjust the whole matter on an amicable basis.

3. In the event we can arrive at a mutually satisfactory basis for adjusting the matter or should you convince us that we are wrong in our present position, we will withdraw the notice of termination.

While I am certain that Mr. Hall will convey this information to you as requested, I am taking the liberty of confirming it to you directly because we do not want you to feel that today's notice of termination is being given in a spirit of antagonism.

Very truly yours,

(Signed) John D. Goodloe,
JOHN D. GOODLOE,
General Counsel.

SEPTEMBER 11, 1945.

Mr. I. W. WILSON, Vice President,
Aluminum Company of America,
Pittsburgh, Pennsylvania.

FROM YOUR LETTER OF SEPTEMBER 6 HANDED US LATE SEPTEMBER 7 BY MR. HICKMAN AND THE SUBSEQUENT DISCUSSION WITH HIM, WE UNDERSTAND THAT ALCOA IS NOT WILLING TO CONTINUE THE OPERATION ON A TEMPORARY OR INTERIM BASIS OF ANY OF THE ALUMINUM REDUCTION OR ALUMINA PLANTS HERETOFORE OPERATED BY ALCOA UNDER ITS LEASE WITH RFC. WE HAD HOPED THAT ALCOA WOULD COOPERATE BY CONTINUING TO OPERATE THESE PLANTS ON SOME TEMPORARY OR INTERIM BASIS SUCH AS THAT STATED IN OUR NOTICE OF TERMINATION IN ORDER TO ASSURE CONTINUITY OF EMPLOYMENT FOR ALUMINUM WORKERS AND TO MINIMIZE DELAY AND EXPENSE INCIDENT TO CONTINUING OPERATIONS OF THESE PLANTS AFTER OCTOBER 31, 1945, IN THE EVENT SATISFACTORY ARRANGEMENTS THEREFOR COULD BE MADE. WE ARE PROCEEDING AS RAPIDLY AS POSSIBLE TO ARRANGE FOR THE CONTINUED OPERATION OF THESE PLANTS AFTER OCTOBER 31, 1945, AND IN ORDER TO PREVENT ANY FURTHER UNNECESSARY UNEMPLOYMENT, DELAY AND EXPENSE IN CONNECTION THEREWITH, WE REQUEST ALCOA'S COOPERATION (1) BY LEAVING AT THE TROUTDALE, SPOKANE, JONES MILL ALUMINUM PLANTS AND HURRICANE

CREEK ALUMINA PLANT THE RAW MATERIALS NOW ON HAND, AND (2) BY NEGOTIATING WITH US FOR THE USE OF ANY ALCOA'S EQUIPMENT OR PROCESSES PREVIOUSLY USED IN THESE PLANTS PRIOR TO ALCOA'S REMOVAL OF SUCH EQUIPMENT. RFC WILL REIMBURSE ALCOA FULLY FOR ITS ACTUAL COST OF THE RAW MATERIALS LEFT AT SUCH PLANTS.

(signed) A. T. HOBSON, *Secretary,*
Reconstruction Finance Corporation.

SEPTEMBER 11, 1945.

A. T. HOBSON, *Secretary,*
Reconstruction Finance Corporation.

REFERRING YOUR TODAY'S TELEGRAM HAVE ASSURED MR. HUSBANDS BY TELEPHONE ALCOA'S COOPERATION YOUR REQUEST ON UNDERSTANDING WE WILL BE FULLY REIMBURSED AT YOUR COST WE ACCEPT YOUR PROPOSITION AS MODIFIED BY MR. HUSBANDS TO LEAVE AT PLANTS INVOLVED STORE SUPPLIES AND SPARE PARTS AS WELL AS RAW AND IN PROCESS MATERIALS AS ALCOA HAS NO PROCESSED EQUIPMENT IN THESE PLANTS NO QUESTION ON THIS POINT INVOLVED. WE ARE READY ANY TIME TO NEGOTIATE ALONG LINES OF LONG OUTSTANDING OFFER REGARDING ANY AND ALL EQUIPMENT AND PROCESSED PATENTS.

I. W. WILSON, *Vice President,*
Aluminum Company of America.

U. S. GOVERNMENT PRINTING OFFICE: 1945

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C. Price 25 cents.

Appendix "J" to petition

ALUMINUM PLANTS AND FACILITIES

FIRST SUPPLEMENTARY REPORT OF THE WAR ASSETS ADMINISTRATION TO THE CONGRESS

FEBRUARY 12, 1947

LETTER OF SUBMITTAL


**WAR ASSETS ADMINISTRATION,
Washington, D. C., February 12, 1947.**

The Honorable The PRESIDENT OF THE SENATE.

The Honorable The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Sirs: In accordance with section 19 of the Surplus Property Act of 1944, we submit herewith a first supplementary report with respect to Government-owned aluminum plants and facilities. This report supplements the report submitted September 21, 1945.

Respectfully,



Administrator.

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DISPOSAL OF ALUMINUM PLANTS AND FACILITIES

Supplement to the Report of the Surplus Property Board to Congress

I. INTRODUCTION

On September 21, 1945, the Surplus Property Board, a predecessor agency of the War Assets Administration, submitted to the Congress under section 19 of the Surplus Property Act of 1944 a report dealing with the disposal of Government-owned aluminum plants and facilities.

The report pointed out the importance of a large and vigorous aluminum industry to national security, and the absence of any substantial degree of free competition in the industry up to that time. It took cognizance of the duty of the disposal agency, both under the act, and in view of the monopolistic background of the industry as developed in decisions of the courts, to dispose of the Government-owned aluminum plants so as to create successful competition, foster employment, aid the national defense, and expand the use of the metal. The Surplus Property Board accordingly recommended to the Congress a competitive disposal program which it proposed to follow in order to achieve these objectives. During mid-October 1945, joint hearings on the program were held by three Senate committees. Because of questions raised at the hearings, Congress approved by joint resolution a 30-day extension of the period for consideration provided under the act. Upon expiration of the extension the program was deemed acceptable, and the Board and its successor agencies have proceeded with its execution.

The accomplishments of the past year, representing substantial progress toward the attainment of most of the major economic objectives of the aluminum program, warrant the submission of a progress report to the Congress in the form of a supplement to the original report. This report will review the actions taken by the War Assets Administration to dispose of surplus aluminum plants and facilities, and will point out what still remains to be done.

II. THE DISPOSAL PROGRAM

The approved competitive disposal program is set forth on pages 50 to 53 inclusive of the report of September 21, 1945. It established

(1) a system of priorities of disposal applicable to all plants and equipment owned by the Government, regardless of the amount of investment, giving first choice to competitors of the Aluminum Company of America (Alcoa), and providing for plants which may be held in stand-by condition, or converted to nonaluminum use, or

exported; (2) criteria of preference among bidders for key plants; (3) a plan for disposal of individual plants or groups of plants in accordance with the above priorities; (4) basic terms of lease or sale; and (5) measures of Government support to facilitate the success of new producers, including bauxite supplies, engineering investigations, and suitable policies for control of disposal of surplus secondary metal.

The five parts of the program and the measures taken to carry them out are discussed in subsequent sections of this report.

III. SUMMARY OF DISPOSALS

A revision of the figures appearing in the first report (see table 1) indicates that the wartime investment of the Government in the aluminum industry was \$716.1 million, of which \$34.2 million represented loans to private enterprise by the RFC, and \$681.9 million went into DPC and Navy plants and scrambled facilities. Government plants and facilities cost \$665.4 million, of which the bulk, or \$629.4 million, were plants costing \$5 million or more each. A complete listing of plants disposed of is contained in Appendix 2.

As of November 30, 1946, \$651.8 millions in Government plants and facilities had been declared surplus, and \$387.3 millions disposed of (including one plant withdrawn from surplus), leaving approximately \$278.1 millions in aluminum plants still awaiting disposal. These disposals comprise chiefly leases, the leased plants costing \$206 million. Plants costing \$79.6 million have been sold for a total of \$28.5 million. In addition, sales and transfers¹ of equipment in Government-owned plants were made amounting to \$11.7 million. Thus, plants representing over half of the original Government dollar investment in the aluminum industry have been disposed of to date. This is shown in table 2.

A summary of the number of plants of all sizes and categories declared surplus and disposed of to date is shown in table 3. The total number of Government-owned plants was 56 (including the lime-soda-sinter facilities adjacent to Alcoa-owned plants, which are treated as complete plants) of which 35 cost more than \$5 million. Of the 56 Government plants, 53 were originally declared surplus and one later withdrawn by Navy Department; 14 have been sold and 14 leased. Of the 28 disposed plants, 16 will continue operation in the aluminum industry.

The basic or key plants in the program are those for production of alumina from bauxite, valued at \$65.7 million, and for the reduction of alumina to metallic aluminum, costing \$184 million. The two big alumina plants at Hurricane Creek, Ark., and Baton Rouge, La., are fundamental to the program. Both plants are now in operation under letters of intent, and leases are being drawn. Four of the nine reduc-

¹ Includes transfer to Veterans Administration of Navy plant withdrawn from surplus.

tion plants have been disposed of, and negotiations for one of the others are under way. The disposal of the fabricating plants which comprise the balance of the Government investment is less advanced, since it not only depends to some extent upon the prior disposal of the basic plants, but may involve problems of conversion. However, 20 out of 38 such plants have been disposed of, representing all types of fabrication.

The details of disposal of individual plants are given in part VII of the report, while the effects on the structure of the industry, and an appraisal of future disposal objectives are described in subsequent sections.

IV. EFFECT OF DISPOSALS ON STRUCTURE OF THE INDUSTRY

In submitting its report to the Congress the Surplus Property Board drew attention to the importance of aluminum in the national defense, the desirability of additional producers in order to increase the number of operating plants in times of national emergency, and the special wartime conditions under which Alcoa had expanded its own capacity materially, while building and operating for the Government most of the Federal capacity. Under the Surplus Property Act, and in view of the background of the aluminum industry, which had been characterized by the absence of substantial free competition, it was recognized that disposal policies should be directed toward promoting competition. A competitive disposal plan was therefore recommended, establishing a system of priorities, and providing for disposal of key plants. It was believed this plan was most likely to achieve the purposes of the statute. On March 12, 1945, the United States Circuit Court of Appeals for the Second Circuit, acting for the Supreme Court, had adjudged Alcoa to have had a monopoly in the production of primary aluminum as of 1940, and pointed out that the question of the future dissolution or reorganization of Alcoa would be affected by the extent to which competition was promoted through the disposal of Government plants.

Prior to the war, Alcoa had entire control of the production of primary aluminum, and of its source material, alumina. In the field of fabricated aluminum products, Alcoa owned more than 80 percent of United States capacity in all areas except foil and castings; in the castings field production was widely distributed. The 1939 distribution of capacity for the various products of the industry is shown in table 4.

Government plants accounted for most of the expansion during the war, although private industry also made large investments in new facilities. As of 1944, although the Reynolds Metals Co., which before the war had been engaged only in the manufacture of fabricated products, had acquired some alumina and ingot capacity, Alcoa operated 95.9 percent of the national alumina capacity and 91.3 percent

of the ingot capacity. Thus, the prewar producing position of Alcoa was substantially unchanged, although it then owned privately only 44 percent of the total alumina capacity and 35 percent of the ingot capacity. As shown in table 5, Alcoa was still the largest operator in the fabricating field, although here also its relative position as a private owner had declined. While two new primary aluminum producers, namely Reynolds and Olin Industries, Inc., had entered that field in wartime, relying largely on Alcoa as their source of alumina, this entry did not, of itself, furnish any assurance that a state of substantial competition would prevail after the war.

Table 6 indicates the effect of the disposal efforts of War Assets Administration and its predecessor agencies upon the structure of the American aluminum industry in terms of the distribution of privately controlled capacity, as of November 30, 1946. Reynolds has been enabled to improve its position and Permanente Metals Corp. (Kaiser interests) to gain a position in the industry by acquiring both alumina, primary aluminum, and fabricating plants. The lease of the Hurricane Creek alumina plant and the Troutdale and Jones Mills reduction plants to Reynolds, and the leasing of the Baton Rouge alumina plant, the Spokane reduction plant and sale of the Tacoma reduction plant to Permanente have provided for these companies the potentialities of becoming competitive factors in the industry, assuming that they can insure access to substantial and economical sources of bauxite. In this way, the relative shares of capacity now in private hands (both through ownership and lease) are, for alumina, Alcoa 43.7 percent; Reynolds 35.9 percent and Permanente 20.4 percent, and for primary aluminum, respectively 54.0 percent; 29.2 percent; and 16.8 percent.²

Alcoa has the most diversified group of fabrication plants. Reynolds had built up, largely through Government plant disposal, a fairly strong position in diversified fabrication, but the Permanente development at the present time is in a much weaker position. Permanente has only one fabrication outlet—sheet. Hence that company will need a more rounded fabrication business, if it is to achieve a balance comparable to its competitors.

In the fabrication group of plants, many remain to be disposed of. However, in the important field of sheet, strip and plate, Alcoa's share of private capacity has at present dropped from its prewar 87.2 percent to 50.0 percent, as the result of the disposal of the rolling mills at Listerhill, Ala., and McCook, Ill. to Reynolds, and Spokane (Trentwood), Wash. to Permanente. Alcoa's capacity for sheet will soon be increased about 150 million pounds annually by the addition of its Davenport, Iowa plant now under construction. This will cause Alcoa's share of sheet capacity to rise to 54.3 percent.

The distribution of productive capacity in surplus plants to new

² These are total capacities, which are not necessarily the same as actual economical capacities.

independent producers represents a major step toward the establishment of a competitive aluminum industry, particularly in the very important lower stages of manufacture. Mere possession of such productive capacity will not, of itself, give rise to competition. Other prerequisites must be met before genuine competition can be achieved. One of these is keeping the newly acquired facilities in substantial production, for it is output and the ability to sell that output that will ultimately be a deciding factor. Another factor is the extent to which existing nonintegrated fabricators and the purchasers or lessees of Government-owned fabricating plants will have available for their operations adequate supplies of ingot, sheet and other forms of aluminum, whether from the present integrated producers or from other sources. The smaller firms and independent fabricators who presently look to the ingot and fabricated aluminum producers as their prime source of supply will be able to withstand competition from the large firms only if they are able to obtain supplies at a sufficiently low price. In the fabricating field it is possible that under some conditions competition may be diminished, rather than promoted. This circumstance, as well as the general market outlook for aluminum and its products, will affect the efforts of WAA to broaden the base of disposals so as to bring additional independent operators for the remaining surplus plants into the field.

V. FUTURE DISPOSAL OBJECTIVES

The Present Inventory and Outlook for Its Disposal

Surplus aluminum plants, and segments of plants, originally costing the Government \$252 million, remain to be disposed of. These plants are listed in table 7, which shows the original cost, the value of any portion disposed of to date, and the value of facilities awaiting disposition. In many cases, disposals have covered the land and buildings only, and disposition of the plant equipment will be made at some future time through the WAA Office of General Disposal.

Alumina Plants.—The remaining facilities at the alumina plants include a sinter plant at the Baton Rouge alumina plant, and some facilities at the Mobile, Ala., sinter plant which were not readily salable due to the type of equipment and because they were located within the premises of the Alcoa-owned alumina plant. There is little likelihood of the use of these facilities in the aluminum industry. Rather they will find their market in the manufacture of cement or fertilizer. The Baton Rouge sinter plant could be thus used, while keeping it as stand-by for the utilization of Arkansas bauxite if necessary.

Reduction Plants.—With the disposal of the Tacoma plant, there remain five reduction plants, valued at \$103 million, and located at Massena, N. Y., Burlington, N. J., Los Angeles, Calif., Maspeth, N. Y., and Riverbank, Calif. Continuing efforts will be made to dis-

pose of the plants for reduction purposes, but high power costs in the areas where the plants are located limit their efficient operation in aluminum reduction, since a major cost item in the reduction process is electric power. The disposal program specified that Massena be offered to Alcoa, subject to the approval of the Attorney General, and it is possible that in the future Alcoa may be interested in acquiring this plant. Some plants are currently being utilized for warehousing purposes. Some of these would be suited for multiple-tenancy projects, if the plant equipment were removed. This applies especially to industries which use electric power in large amounts, since heavy power installations are present. However, high power rates may prove disadvantageous.

All the plants are available for immediate disposal except the Maspeth, N. Y. plant, which is being used by the Navy in conjunction with the Brooklyn Navy Yard, and will be held at least until January 1948. It is likely that future disposals will be on a piecemeal basis, either under multiple tenancy systems, or by means of sales or leases of particular segments of the plants. It may also be desirable to consider the temporary retention of some plants in cases where new power developments appear likely to enhance their disposability.

The shortage in primary aluminum production is currently affecting the smaller independent aluminum fabricator, who has difficulty in placing orders for relatively small amounts of ingot. To date, surplus reduction plants have been leased to operators whose own fabricating facilities are capable of consuming their total primary aluminum production. This circumstance has a bearing on the disposal of the remaining reduction plants as well as the fabricating plants. It would be helpful to both the present fabricators and any new operators if further disposals of reduction plants were made so as to increase the supply of primary aluminum on the open market.

Future prospects for ingot and aluminum fabricating plants will depend on the extent to which the present large demand for aluminum is maintained, particularly as steel and wood become readily available once more. Other factors are potential competition from secondary smelters (an expanding industry), and from foreign producers.

Extrusion Plants.—The accelerated demand for aluminum extruded products for housing should aid in the rapid disposal of two remaining extrusion plants, Halethorpe, Md., and Louisville, Ky., the latter of which at present is under interim lease to the Reynolds Metals Co.

Other Fabricating Plants.—The foundries, forge shops, rivet, and powder plants are the chief group in the aluminum industry which reflect the virtual disappearance of a wartime aircraft program. The markets for their products have not yet been restored, in contrast to extrusions and sheets. Moreover, at the present time the lack of readily available supplies of ingot from the large producers is a serious deterrent to fabricators.

The demand for aluminum foundry products, and particularly for aluminum cast cylinder heads which were used in aircraft engines, has substantially dropped off since the end of the war. This situation has caused some difficulty in the disposal of the foundries, since aluminum operators are not interested in expanding casting facilities at this time. The two cylinder-head foundries at Lockland are units within a large aircraft-engine plant, and their disposition is connected with the sale or lease of the entire plant. The Dearborn plant is located within the Ford River Rouge works and is dependent on Ford for utility services. The cylinder-head plant at Cleveland is the most desirable foundry still available. It is possible that these facilities may be converted by a future operator to some other type of foundry work.

The other facility at Cleveland is a general purpose sand-casting foundry equipped to handle any size of casting, but because of limitations in design of the portion of the plant devoted to heavy castings, that section has not been operated. The land and buildings are not owned by the Government. The Government's investment in plant rehabilitation and machinery and equipment was recently awarded in a sale to the National Bronze and Aluminum Foundry Co., owner of the real estate.

Disposition of the surplus forging plants has been adversely affected by the sharp decline in demand for aluminum forged products, which, during the war, were used largely in aircraft production, and the manufacture of shell fuzes. One plant, however, Plancor 1395 at Erie, Pa., is for the time being on interim lease to its wartime operator. None of the Government plants disposed of is operating on aluminum, and the disposal outlook is so poor that a multiple tenancy project has been authorized for Canonsburg, the largest of the forging plants. A portion of the building at Plancor 446, Saginaw, Mich., has been leased to General Motors for offices, etc. Objections of the nearby residents to noise and vibration may prevent disposal of the plant as a forge shop. General Motors Corporation has submitted a proposal to lease this plant for automobile manufacturing. Disposal of the four forging plants will probably be slow and may ultimately depend on possibilities of conversion to some other type of production.

Disposals of the aluminum rivet facilities are dependent upon disposals of the four aircraft plants in which this capacity is located. In view of the lowered demand for aluminum rivets, it is expected that the capacity will not be used in this type of production, in the event that the plants are disposed of as complete units. A fifth aircraft plant with rivet capacity has been rented out as a multiple tenancy project. The aircraft plants could be readily converted into aluminum prefabricated house assembly plants, if the demand for such capacity arises.

The present lack of demand for aluminum powder has diminished the prospect for disposal of the surplus powder plant at Glassmere,

Pa., and the powder facilities at the Cleveland, Ohio, magnesium scrap reclamation plant. They can, however, possibly be adapted to the production of other metal powders.

Future Problems and Disposal Objectives

Although disposals have thus far been about evenly divided between leases and sales, nevertheless, leases comprise the bulk of the disposals of the larger plants. In view of the high proportion of leases, with the concomitant possibility that some plants may ultimately be returned when the leases are terminated by cancellation or expiration, WAA cannot yet consider its task completed as far as the aluminum industry is concerned.

Four leases have been executed thus far, and the other plants for which disposal by leasing was approved, are operating under letters of intent. These letters of intent contain the broad terms of the proposed lease, and contemplate that these, as well as additional details will subsequently be embodied in the final document. Table 8 lists plants which have been leased or which are operating under letters of intent, the effective date, the period, and the earliest possible date of cancellation by the lessee.

It will be seen that all the leases set up thus far are for a period of 5 years, with one exception, the extrusion plant at Adrian, Mich., which is for 10 years. In one case, the lease can be cancelled at any time upon 12 months' notice (Plancor 773-F2, Phoenix, Ariz.), but for the rest, the earliest cancellation dates range from July 1, 1947, to September 28, 1949. The possibility of this early cancellation is one which WAA must take into account.

Each group of aluminum plants depends for its raw material upon a smaller group of plants at a lower stage of manufacture. The basic plants, such as the alumina and the economical reduction plants, have been disposed of in such a manner that now there are three integrated producers in the aluminum industry. While it might be desirable to have more producers in the field, no immediate possibility appears to exist at this time for the creation of a fourth integrated producer through disposal of Government-owned plants. Table 9 shows the distribution of bidders for surplus aluminum plants and indicates that in some cases only one bid was finally received, but that in one instance the number was five.

The War Assets Administration has, since the first report to the Congress, followed a course of endeavoring to establish competition in the aluminum industry. This policy will be continued. WAA believes that the objectives of the Surplus Property Act can be accomplished within the framework of the policy and program set forth in the first report to the Congress.

On January 5, 1946, the Surplus Property Administrator, in a letter addressed to Senator Joseph C. O'Mahoney as Chairman of the Subcommittee on Surplus Property of the Senate Committee on Military Affairs, advised the Congress that difficulties encountered in negotiations with Alcoa in regard to necessary patent licenses might hinder the disposal of the aluminum plants to competitors pursuant to the report of September 21, 1945. In a letter to the Administrator dated January 10, 1946, Alcoa agreed to grant licenses to practice its patented alumina processes in one of the two key alumina plants. As of November 30, 1946, negotiations were under way looking to the consummation of appropriate license agreements, but the matter is still unsettled.

Alumina Plants

Alcoa has agreed to grant to the Government royalty-free licenses (with the right to sublicense others) for the use of its patented alumina processes at the two key alumina plants, viz., Hurricane Creek, Ark., and Baton Rouge, La. In the case of the Hurricane Creek plant, this includes the lime-soda-sinter process directed to facilitating the use of low-grade bauxite; a process for the continuous digestion of aluminous materials; and a process for facilitating the settling of alumina by the use of starch as a settling aid.

The right to use Alcoa's patented synthetic cryolite and aluminum fluoride process is not included in the proffered license, although facilities to manufacture these products are located at the Hurricane Creek plant, and these facilities are included in the letter of intent.

At Baton Rouge, the lime-soda-sinter facilities are not included in the postwar lease. Accordingly, the royalty-free grant contemplated for this facility does not include a license under Alcoa's lime-soda-sinter patents, but does include a license under the continuous-digestion process patent, under the starch settling patent, and under any future patent for an optional process described in a pending patent application directed to the treatment of filter cloths with ferrous compounds as an aid in the filtration of the aluminous product.

One of the conditions attached by Alcoa to the proffered licenses under Alcoa's alumina process patents is that the Government and its sublicensees will grant to Alcoa a nonexclusive, royalty-free license under patented improvements upon the Alcoa licensed processes used at the plant which are owned or controlled by the Government or its sublicensees.

Patented Equipment

Alcoa has committed itself to grant a license to the Government and any operator to make use (for a consideration) of most of the patented equipment located in the Alcoa-operated Government

plants. Several drafts of a proposed agreement to that end have been prepared, but to date none has been accepted. If such an agreement is consummated, the equipment covered by it will be completely free of patent restrictions, whether it be in the hands of the Government, the operators of the respective plants, or any future transferees of the equipment.

Process Patents

a. *Direct ("Chill") Casting of Ingots*.—The so-called direct ("chill") casting process for casting aluminum ingots prior to fabrication upon which process Alcoa claims to have patent rights, is provided for by installations at many of the Alcoa-operated fabrication plants. Alcoa has indicated a willingness to license users of this process at a running royalty of \$1 per ton of ingot cast. It is anticipated that, if required, separate license agreements with Alcoa will be negotiated by the individual operators. Whether this royalty would be burdensome to the point of tending to diminish competition is a question that cannot be answered definitely. It would depend in part on ingot capacity in operation and upon costs of competitive casting processes.

b. *Synthetic Cryolite and Aluminum Fluoride Process*.—At Hurricane Creek, facilities were constructed but not entirely completed for the manufacture of synthetic cryolite and synthetic aluminum fluoride, the latter by a process described in an Alcoa-owned patent. These chemicals are used as electrolytes in the reduction of alumina to aluminum metal. The lease of this plant to Reynolds Metals Co. includes the facilities so constructed. Alcoa has offered to license its synthetic aluminum fluoride patent rights at a running royalty of \$15 per ton of fluoride produced. As of November 30, 1946, the matter is unresolved.

c. *Miscellaneous Processes*.—Alcoa owns a number of process patents relating to the melting of aluminum, preparing the metal for casting, and treating the cast metal. These patents relate primarily to heat treating, fluxing and degassing the metal. None of these processes is considered essential to the operation of the plants; rather they may be considered to be in the nature of optional or alternative processes. Alcoa has indicated its willingness to grant licenses under these patents to postwar operators who may desire them, but as of November 30, 1946, has made no statement as to its royalty terms in respect to these processes.

Products

There are no subsisting product patents on either alumina or aluminum as such. The majority of the alloys made from aluminum are likewise free of patents. However, Alcoa has a few patents covering special alloys of aluminum with other metals. These alloys are said to amount to only about 10 percent of the total sales of aluminum.

alloys. Alcoa had indicated a willingness to grant licenses to postwar operators, in most cases at a royalty of one-quarter of 1 cent per pound. In certain other cases the royalty aspect remains as yet undetermined.

VII. DISPOSALS IN RELATION TO APPROVED PROGRAM

1. Priorities of Disposal

a. *First Priority for Competitors of Alcoa.*—Since disposal priorities were set up primarily to bring new operators into the aluminum industry, prospective competitors of Alcoa were to have first choice of plants and equipment. Of the 28 plants disposed of, representing \$374.2 million at original cost, all except one, the extrusion mill at Cressona, Pa., costing \$26 million, have been sold or leased to independent operators.

In considering prospective competitors of Alcoa, the policy was to select bidders having "the organization, experience, and financial resources that afford the greatest prospects for successful survival and maximum production in industry." The Reynolds Metals Co. and the Kaiser interests were, therefore, in some instances given preference over other bidders. The key plants in alumina production, aluminum reduction, and fabrication have been leased or sold to Reynolds or Permanente. Aside from Alcoa, Reynolds is the only integrated producer having previous experience and an established organization. Kaiser, while entering the aluminum industry for the first time, has an established organization which operates a large number of enterprises in the cement, shipbuilding, and steel industries.

Surplus plant disposals have strengthened Alcoa's competitors by enabling them more fully to integrate their operations, and by giving preference to companies which could make maximum use of facilities acquired. Thus, the leasing of the Baton Rouge alumina plant and the reduction and sheet mill at Spokane and the sale of the Tacoma reduction plant to Permanente will permit this company to establish a completely integrated aluminum operation from alumina to semi-finished products. In the case of the very desirable Troutdale, Oreg., reduction plant, lease bids were received from Kaiser Cargo, Inc., Asarco Aluminum Corp. (a company controlled by the American Smelting and Refining Co.), and the Reynolds Metals Co. One reason for acceptance of the Reynolds offer was that Reynolds was the only one of the three bidders who contemplated making full use of all four pot-lines in the plant. But the principal factor in the decision to award the plant to Reynolds was the lack of sufficient metal producing facilities to permit Reynolds to supply the needs of its owned and leased fabricating facilities. Reynolds operates fabricating facilities having an annual war-time capacity of over 250,000 tons while its primary metal capacity without Troutdale was only 115,000

tons. It was also felt that the lease of Troutdale to Reynolds would increase the rentals payable to the Government on the Hurricane Creek alumina plant, and on the fabricating plants leased to Reynolds, primarily the McCook sheet mill, and the Grand Rapids extrusion plants. Rentals of these plants are dependent upon production, and it appeared probable that the operation of the Troutdale plant would require greater production of alumina, and would afford more manufacture of fabricated products. For plants other than key facilities, this policy could not be applied because in most instances only one bid acceptable to the WAA as submitted.

b. *Limited Disposal to Alcoa.*—Alcoa was to be given the opportunity to take over certain desired facilities, subject to the approval of the Attorney General, but only under terms of lease or sale that gave it no competitive advantage.

Of the 16 sold or leased plants which will continue operation in the industry, only one will be run by Alcoa. The Aluminum Co. to date has submitted bids on three of the 21 Government-owned plants in the category costing over \$5 million, which it had operated during the war—the McCook rolling mill at Chicago, the extrusion plant at Cressona, Pa., and the alumina plant at Hurricane Creek. Although Alcoa was willing to acquire the McCook plant by purchase at fair value, its offer was not considered because at the time the Attorney General had indicated disapproval of the disposal of any plants to Alcoa. Alcoa's bid on the Cressona plant was accepted by the WAA and submitted to the Attorney General, whose views are contained in the letter in Appendix 1. It is possible that this may be the only surplus plant that will be sold to Alcoa since the company has refused WAA's offers with respect to the lime-soda-sinter facilities attached to the Alcoa owned plants at Mobile and East St. Louis, and has not thus far offered to acquire the Massena, N. Y., reduction plant. Alcoa is negotiating for some equipment in facilities located in Alcoa owned plants. With these exceptions, the policy of limiting the disposal of plants to Alcoa has been carried out.

c. *Stand-by Facilities for National Defense.*—Upon recommendation of the War and Navy Departments, the Government is to consider maintaining in stand-by condition individual plants as necessary insurance for the national defense.

In carrying out this policy, the War Assets Administration has consulted with the Army and Navy Munitions Board in individual cases of proposed disposals of aluminum plants for other uses.

The ANMB has been kept fully informed of proposed disposals, which have met with their approval.

d. *Disposals for Nonaluminum Uses.*—Other facilities were to be offered to private enterprise wishing to use buildings or equipment for purposes other than aluminum production.

To date, 12 plants have been disposed of to non-aluminum operators, and particular buildings or parcels of land, of 9 more plants have been leased or sold to individuals and corporations. Of the 12 plants disposed of, 2, representing over \$25 million of Government investment (the lime-soda-sinter facilities adjacent to Alcoa mills at Mobile and East St. Louis) were sold to cement companies, and a general purpose foundry at Redford, Ind., was purchased by the General Motors Corp. to be used in the output of steel drop forgings. Under a multiple tenancy project which has been authorized at the Alcoa-operated aluminum drop forging plant at Canonsburg, Pa., some space has been leased to a tenant. The aluminum foundry at the Chrysler-Dodge plant at Chicago has been leased, along with the remainder of the plant, for production of the Tucker automobile.

Parcels of land unnecessary to the operation of the plants adjacent have been sold at the Baton Rouge alumina plant, the McCook rolling mill in Chicago, the Halethorpe extrusion plant at Baltimore, and the Maspeth reduction mill in Queens, N. Y. Individual buildings of several plants have been disposed of to operators outside the aluminum field. Buildings of the Alcoa-operated Kansas City cylinder head plant have been leased to a manufacturer of commercial vending machinery, and buildings at a third plant in Springfield, Mass., have been sold to a manufacturer of motorcycles. General Motors-Chevrolet has rented the two-story portion of the main building of the aluminum forge plant at Saginaw, Mich., for use as offices and die shop in connection with its automobile production. Minor sales of buildings or equipment have been made at other plants where no interest was shown in the complete plant.

a. Exports to Foreign Countries.—Plants and equipment not otherwise needed may be exported to members of the United Nations, subject to the approval of the State, War, and Navy Departments.

Thus far no United Nations member Governments or their citizens have acquired surplus aluminum plants. However, if foreign bids are received for surplus plants neither desired by American companies nor needed for national defense, they will be given due consideration.

2. Preferences Among Bidders for Key Plants

The program provided that key plants be disposed of to those bidders who have the organization, experience, and financial resources that would afford the greatest prospects for successful survival and maximum production. These key plants were the alumina and reduction plants, and the largest fabricating plants. As pointed out previously, chiefly Reynolds and Kaiser have leased or purchased such plants, and Reynolds is the only integrated aluminum producer, aside from Alcoa, possessing previous experience and an established organization. Kaiser enters the aluminum industry for the first time, but with some previous experience in light metals.

The size and cost of the key plants, and the magnitude of the operations involved have made it difficult for smaller business concerns to enter the aluminum field, or to meet the qualifications demanded in the program, although Permanente and Reynolds are small in comparison with Alcoa. This is brought out in table 9, which shows the distribution of bidders in the sale and lease of the disposed plants. The stated policy may be considered as having been carried out to a reasonable degree in regard to the large plants, but its extension to smaller concerns in the disposal of the remaining plants, largely in the fabricating group will receive increased attention.

3. Terms of Lease or Sale

The policy calls for rental terms and sales prices to be "fixed with due regard to earning ability of the plant and not necessarily with regard to original cost or replacement value." This policy has been carried out. Some rentals have been geared to volume of sales with minimum rentals set initially at nominal figures. A general principle has been to charge a rental scaled upward from a base of 4 percent, calculated upon the value of the property, rising to 8 percent in the fifth year. Stated guaranteed minimum rentals are also scaled upward, being based upon percentage of plant capacity.

Most leases contain an option to purchase at any time up to six months prior to termination or cancellation (see table 8) upon either of the following terms:

(A) Present reproduction cost, less depreciation to the date of lease ("Present Depreciated Reproduction Cost"), plus interest at 4 percent per annum from that date, less rentals plus interest at 4 percent per annum; or

(B) Present depreciated reproduction cost, less depreciation at the rate or rates allowed by the Bureau of Internal Revenue on similar facilities in the computation of Federal income taxes; the minimum residual value on all such items to be 25 percent; whichever is the higher.

The present depreciated reproduction cost is to be established by appraisal of the plant and facilities at or near the date the lease begins. It will not be the same as the estimated reproduction cost of the plant used in establishing rentals which is a figure based upon a calculation to cover excess wartime cost, and not upon an appraisal.

Terms of sale have generally been related to the fair value set by appraisal engineers, or to the depreciated reproduction value. The major exceptions to this method have taken place in the sale of the sinter plants, which are scrambled facilities on the premises of Alcoa mills, where a recoverable value of the plant if dismantled is used as the basis for accepting bids. In several cases the high bid was so far below the fair value that the Government preferred to hold the plant in standby rather than accept a sacrifice sale. In

three instances, the sale of the Cressona extrusion plant to Alcoa, of the Listerhill rolling mill to Reynolds, and of the reduction plant at Tacoma to Permanente, the bidders raised their prices when the WAA had refused to accept the original offer.

A. Individual Plant Disposal

In addition to the general policies discussed above the surplus disposal program makes certain specific recommendations for the disposal of individual plants because of special conditions surrounding them. The manner in which these disposals have been effected for the key plants will be described in this part of the report. The disposal of the other plants is covered in appendix 2. Table 8 summarizes the effective dates, periods, and cancellation dates of those plant leases which have been concluded.

a. *Alumina Plants.*—The two Government-owned plants for the extraction of alumina from bauxite using the Bayer process were:

Plancor 226-X, Hurricane Creek, Ark., declared surplus 7/31/46.

Plancor 226-AO, Baton Rouge, La., declared surplus 7/23/46.

Both plants, which were operated by the Aluminum Company of America, have been leased to competitors of Alcoa. The successful bidders were Reynolds Metals Co., and the Permanente Metals Corp., respectively.

Plancor 226X—Hurricane Creek, Ark.

Lessee: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost	\$29,348,877	\$12,982,961	\$26,364,736
Sales and transfers	643,086		
Net cost	28,705,790		
Reproduction cost (estimated)	27,300,000		
Fair value (estimated)	27,300,000		

Production capacity, 1,555,000,000 pounds per year.

Number of bidders, 2. Floor area, 472,000 square feet.

The program provided that this plant be offered to a competitor of Alcoa under terms that would guarantee the sale of alumina to others on a basis assuring a competitive price.

Reynolds Metals Co. submitted the only offer on the Hurricane Creek alumina plant, excluding an offer by Alcoa which, under the program, was not considered acceptable by the Attorney General. The agreement to lease contains the following antitrust provision (which also appears in the Baton Rouge lease):

The lessee agrees that it will not, within the term of the lease, enter into any contract, agreement, understanding or working arrangement with any other

producer of alumina or aluminum (either domestic or foreign) with respect to limiting production or fixing prices or terms or conditions of sale of alumina or aluminum and that the lessor may terminate the lease for breach of this stipulation.

Rental of the plant has been fixed on a basis of 25 percent of plant capacity, on a sliding scale from 4 to 8 percent with guaranteed minimum rentals starting at \$273,000 and progressing to a peak of \$546,000. The WAA has agreed to expend \$812,000 of Government funds to complete the salting-out equipment, waste disposal and filtered water supply and to put the plant into operating condition. The lease runs for 5 years, with an option for a 2-year renewal and a purchase option.

In fulfillment of the requirement that the terms guarantee the sale of alumina to others on a basis assuring a competitive price, the lease provided for an arrangement for Reynolds to set a ceiling price on alumina as follows:

"The Lessee agrees to sell alumina to producers of aluminum pig or ingot in reduction plants constructed by the Government who have insufficient alumina production of their own at cost plus 6 percent, but in any case not over \$40 per short ton f. o. b. plant, except in the event that labor, raw materials and power should exceed the price levels of these cost items during the second quarter (1945), then such maximum price shall be increased proportionally. * * * The amount the Lessee agrees to furnish prospective purchasers of alumina is up to its total capacity less the Lessee's requirements for the production of aluminum.

"In establishing the cost of alumina to be sold by the Lessee to others, it is understood that the cost of bauxite entering the cost of alumina, shall not exceed the delivered price at which the Government-owned bauxite is available to Lessee or the delivered price the Lessee can purchase from independent producer. * * *

"In the event the Lessee exercises its option to purchase, the Government reserves the right, if any credit terms are extended to require Lessee to continue to sell alumina * * * on the same terms as under the lease, until such a time as the plant is fully paid for."

The ceiling figure of \$40 per ton of alumina was considered to provide sufficient margin, having in mind the representative wartime production costs of \$28-\$34 per ton,¹ and the probable rate of operation at a level well below capacity, and the use of a medium grade bauxite from Government stocks and nearby sources, to provide competition with alumina produced by Alcoa. Alcoa had also offered, in the event it leased Hurricane Creek, to sell alumina at not more than \$40 per ton.

The effective date of the agreement to lease and the letter of intent under which the plant is now operating is April 15, 1946. Lessee will have the right to cancel the lease after expiration of the first 2 years on 6 months' notice. The WAA reserves the right to cancel the lease after 30 days' notice in writing for the nonpayment of rent or the violation of any of the lessee's obligations under the terms of the lease, if such default is not cured within 30 days:

¹ Does not include interest, taxes, general overhead expense, or depreciation. Sources: Hearings Before Senate Small Business Committee, Part 47, Future of Light Metals, 2/27/46, P. 6047.

The measures which have been taken by WAA to provide a supply of bauxite from the Government stockpile at Hurricane Creek to this plant are described at a subsequent place in this report. Operations were resumed in April 1946.

Patent matters pertaining to alumina, aluminum fluoride, and synthetic cryolite are discussed in section VI of the report.

Plantor 226-AO—Baton Rouge, La.

Lessee: Permanente Metals Corp. (Kaiser Cargo, Inc.).

	Total	Land and buildings	Machinery and equipment
Reported cost	\$26,982,671	\$6,866,304	\$16,486,267
Sales and transfers	1,095,512		
Sinter plant	7,300,000		
Net cost	18,000,159		
Reproduction cost (estimated)	12,648,311		

The Baton Rouge agreement to lease excludes the \$7.2 million sinter plant, installed in connection with the alumina operation, since Kaiser plans to import its bauxite, probably from Surinam (Dutch Guiana). Although the incomplected sinter plant has not been disposed of, it may be sold or leased for some other use, such as the manufacture of cement. The alumina plant, which represents an original investment of about \$18,000,000, was leased for 5 years, with an option for a 2-year renewal and another option to purchase. Rentals, computed on an upward sliding scale, are based on the value of 25 percent of plant capacity, computed at 70 percent of the cost of the plant, but would be increased proportionately if the plant were operated at more than 25 percent of capacity. The guaranteed annual minimum rentals, beginning at \$128,500 for the first year, run to \$252,900 for the fifth and successive years. Another rental bid was submitted by Asarco Aluminum Corp., an affiliate of the American Smelting and Refining Co. The principal factor against the proposal of Asarco was the belief that it was preferable to have two well-equipped competitors of Alcoa rather than three with inadequate facilities. Allocation of the plant to Permanente permits the company to run a completely integrated aluminum operation through the state of semifinished products, in view of previous leases by the company of the reduction plant and rolling mill at Spokane. The Permanente operation will thus have an independent supply of alumina for producing aluminum for peacetime use.

The WAA had agreed to expend an estimated \$319,000 to place the plant in operating condition. It was estimated that, in addition, the installation of turbogenerators costing \$463,000 and a dock costing

\$1,130,000 would be necessary. These expenditures have not yet been approved, nor has the lease been concluded, although the plant is now operating under a letter of intent. The position of WAA is that if Permanente offers to reimburse the Government within a reasonable time for expenditures arising from installation of turbogenerators or construction of a dock, and which might require an outlay of more than \$1 million, suitable negotiations will be undertaken.

b. *Lime-Soda-Sinter Plants*.—The lime-soda-sinter plants, adjacent to the Alcoa mills at East St. Louis and Mobile, were built as national defense measures in the event sinkings of bauxite ships made necessary the use of low grade high-silica domestic ores.

The program provided that they were to be offered to Alcoa, subject to the approval of the Attorney General, on terms that would confer no advantage in production costs over competition.

The plants were offered to Alcoa, and when Alcoa refused were advertised for public sale.

Plancor 1370—East St. Louis, Ill.

This scrambled facility was incapable of separate operation. It was declared surplus April 15, 1946. The buildings and structures were evaluated by RFC at \$2.9 million, and machinery and equipment at \$9.5 million, a total of \$12.4 million. Twelve bids were received, and the plant was sold on August 27, 1946 to the Earle P. Halliburton Co. of Los Angeles, for \$2.1 million cash. The purchaser intends to dismantle all of the removable facilities, and to ship the equipment and materials to two other locations (one in Venezuela and one in Texas) where new cement mills will be constructed. This type of facility has limited conversion possibilities and is most adaptable to the manufacture of Portland cement. Due to the highly specialized nature of the plants, only a fraction of the original cost could be recovered in the plant after conversion to cement manufacture. This accounts for the low monetary realization on the investment in these plants.

Plancor 1371—Mobile, Ala.

The plant was declared surplus July 31, 1946. It was valued at \$14 million, of which land and buildings represent \$4.2 million, and machinery and equipment \$9.8 million. The main portion of the facility originally costing \$9.6 million was sold to the Ideal Cement Co., of Denver, the highest of five bidding cement companies, for \$1.5 million. The purchaser has converted and is now operating a cement mill at the site. Scrambled facilities costing \$4,094,000 remain at the site. Sales and transfers have been effected on some equipment which cost originally \$334,000.

c. *Semi-Commercial Alumina Plants*.—Under the terms of the plant disposal program, four semi-commercial alumina plants built to experiment on alumina production from clays and other aluminous

ores, located at Salt Lake City, Utah, Harleyville, S. C., Laramie, Wyo., and Salem, Oreg., were to be put into production until they had had time to demonstrate the feasibility or lack of feasibility of the processes. They were then to be offered to the wartime operators. Those not accepted were to be turned over to the Bureau of Mines for its own experimental work. By the end of 1945, operating experience at those plants which had been in operation had indicated that their processes were not competitive with production of alumina from bauxite.

The Kalunite Plant (Plancor 291), at Salt Lake City, Utah, costing \$4.9 million, after further opportunity to demonstrate possibilities of the process, failed to produce successfully, and was shut down. It was declared surplus on June 4, 1946, and on July 19 the laboratory portion of it was leased to the Bureau of Reclamation, United States Department of the Interior, for soil testing purposes.

The Laramie, Wyo., plant (Plancor 1844), costing \$4.4 million, was 99 percent completed, but never operated. The RFC will await a determination by the Bureau of Mines of whether this plant is capable of utilization; meanwhile, it is currently held in stand-by, and has not been declared surplus.

Plancor 1865 at Salem, Oreg., involving an expenditure of \$5.8 million, produced a little alumina at high cost, but experience indicated it was not worthwhile to continue production. The Salem plant is currently producing ammonium sulphate for fertilizer purposes. Enough experience was accumulated at Plancor 1831, Harleyville, S. C., to demonstrate the lack of commercial value of the operation, and since the private operator did not want to take over the plant it was shut down July 25, 1946. The Salem and Harleyville plants have not been declared surplus, but are being held under option to the Bureau of Mines pending efforts of that bureau to obtain Congressional sanction and appropriations for further experimentation and plant alterations.

d. *Alumina Reduction Plants.*—Nine plants for the reduction of alumina to the metal were built by the Government during the war. They were:

Plancor No.	Date declared surplus	Location	Reported cost	Annual capacity (000 lbs.)
226-K	1-16-46	Jones Mills, Ark.	229,832,940	144,000
226-O	4-10-46	Trentdale, Oreg.	19,386,563	144,000
226-S	1-4-46	Spokane, Wash.	28,202,360	210,000
245	5-28-46	Tacoma, Wash.	66,299,097	41,360
226-NY	7-1-46	Massena, N. Y.	19,962,516	108,000
226-A1	7-24-46	Queens (Masspeth), N. Y.	22,925,027	288,000
226-A4	5-18-46	Riverbank, Calif.	11,828,786	108,000
226-A3	5-18-46	Burlington, N. J.	16,716,630	108,000
226-LA	6-14-46	Los Angeles, Calif.	24,492,323	180,000

By the end of October 1945, all nine of the DPC aluminum reduction plants had been shut down. The Spokane plant was the first

to be declared surplus to the WAA (January 4, 1946) and by the beginning of August 1946, declarations on the remaining eight had been received.

The aluminum program provided that the Jones Mills, Troutdale, Spokane, and Tacoma reduction plants were to be offered to competitors of Alcoa. Undisposed of plants might be held in stand-by for an indeterminate period because of their prospective commercial value should aluminum markets expand substantially. Three large and desirable plants have been leased: Troutdale, Oreg., and two lines at Jones Mills, Ark., to the Reynolds Metals Co., and Spokane to the Permanente Metals Corp. The Jones Mills plant is now in operation, using alumina from the Hurricane Creek alumina plant leased by Reynolds. The Permanente, Spokane mill will also use Hurricane Creek alumina until production at the Baton Rouge alumina facility leased by Permanente gets under way. Operations at the Troutdale plant have now begun. Tacoma, Wash. has been sold to Permanente Metals Corp.

Plancor 226-K—Jones Mills, Ark.

Lessee: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost.....	\$29,325,940	\$5,175,416	\$24,150,524
Sales and transfers.....	472,198		
Net cost.....	\$28,853,742		
Reproduction cost (estimated).....	\$30,216,519		

Fair value (estimated), \$13,370,000 (for two potlines).

Production capacity—144,000,000 pounds per year (for four potlines).

Number of bidders, 1. Floor area, 689,140 square feet.

Reynolds' offer to lease the Jones Mills plant was the only offer found acceptable to the Government, and lease was approved early in the spring of 1946. Only half the plant is being leased because power is available for only one-half. As in the other leases for reduction plants, the WAA agreed to place the plant in condition to operate, to do an initial relining of certain pots in the potlines, and to make certain capital additions to the facility. The agreement to lease all of the plant except two potlines is for 5 years with a 2-year renewal option, and an option to purchase the entire plant. Rentals are set on an upward graduated scale ranging from 4 to 8 percent of fair value, and amounting to from \$534,800 for the first year to \$1,069,600 for the fifth year. Lessee has the right to cancel after expiration of the first 2 years on 6 months' notice. Operation of the plant began in May 1946, under a letter of intent.

Lessee: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost	\$19,296,643	\$4,168,997	\$13,217,646
Sales and transfers	306,741		
Net cost	18,989,902		
Reproduction cost (estimated)	12,286,000		
Fair value (estimated)	13,238,000		

Production capacity, 144,000,000 pounds per year.

Number of bidders, 3. Floor area, 762,471 square feet.

In addition to Reynolds, Permanente, and Asarco (an American Smelting & Refining Co. subsidiary) submitted bids for the lease of the \$19 million Troutdale plant, one of the most desirable of the Government-owned reduction plants. Terms offered by all three bidders were substantially similar, except that Reynolds submitted the only offer which contemplated the full use of all four pot-lines. The principal factor in the leasing of the plant to Reynolds was that company's shortage of sufficient aluminum producing facilities to permit it to supply the needs of its owned and leased fabricating facilities. This situation was discussed under Section VII-1, Priorities of Disposal. The agreement to lease is for a term of 5 years (from first date of operations), with an option to extend for an additional 2-year period. Lessee is given an option to purchase for a period of 4½ years, from the date of the lease. Lessee will have the right to cancel after expiration of the first 3 years on 6 months' notice. Rentals are set on a graduated scale, ranging from 4 to 8 percent of fair value, amounting to \$429,100 in the first year, and rising to \$1,058,300 for the fifth and subsequent years. The first pot-line went into operation September 28, 1946, under a letter of intent.

Plancor 226-S—Spokane, Wash.

Lessee: Permanente Metals Corp. (Kaiser Cargo, Inc.).

	Total	Land and buildings	Machinery and equipment
Reported cost	\$22,302,280	\$4,006,540	\$18,245,740
Sales and transfers	346,282		
Net cost	22,055,998		
Reproduction cost (estimated)	16,022,000		

Fair value (estimated), 70 percent of cost.

Production capacity, 216,000,000 pounds per year.

Number of bidders, 2. Floor area, 853,000 square feet.

Bids on the Spokane plant were submitted by Permanente and Reynolds. Each bid was contingent upon the leasing of the Trentwood rolling mill to the bidder. Since the WAA had conditionally approved the lease of this mill to Permanente, on March 27, 1946, the disposition of the reduction plant to Permanente was decided upon. The agreement to lease (letter of intent, effective July 17, 1946) followed the usual terms of 5 years, option for a 2-year renewal and option to purchase. Lessee has right to terminate after 30 months. Rentals were based upon a standard rate per pot line, running from \$104,000 per pot line for the first year to \$208,000 for the fifth and successive years, with yearly minimums set on the assumption that additional pot lines will be placed in operating condition during the period of the lease. These rentals were computed on the basis of attaining a maximum rental in the fifth year equal to 8 percent of 70 percent of the actual plant cost of \$22.3 million, beginning with 4 percent for the first year and increasing 1 percent each year. Operations were started in July 1946. Permanente has requested that all six pot lines be put into operation.

WAA agreed to place the plant in operating condition for an estimated \$1,481,000. The lessee was also given the right to request certain capital additions at Government expense, and on July 19 the company requested additions to the plant of one oil circuit breaker at an estimated cost of \$15,000, to be obtained from one of the four on hand in the Torrance aluminum plant at Los Angeles. The WAA authorized transfer of this equipment, proposing an upward adjustment in the rental terms in consideration of such a capital addition. The WAA has also arranged to sell to the Permanente Metals Co. for use at Spokane, alumina currently in inventory at Jones Mills, Troutdale, and Spokane amounting to approximately 80 million pounds, at \$48.25 per ton. Payment for the alumina in the Jones Mills and Troutdale stock piles is to be made on delivery, and payment for aluminum at Spokane to be made within 2 years of acquisition, on a 4-percent carrying charge basis.

Plancor 245—Tacoma, Wash.

Purchaser: Permanente Metals Corp. (Kaiser Cargo, Inc.).

	Total	Land and buildings	Machinery and equipment
Reported cost	\$6,289,667	\$2,116,731	\$4,172,936
Present normal reproduction value	3,673,440	2,156,519	1,516,921

Present normal reproduction value (estimated) less depreciation, \$3,941,664.

Fair value (estimated), \$3,289,748.

Production capacity, 41,500,000 pounds per year.

Number of bidders, 4. Floor area, 248,111 square feet.

Three proposals to lease the plant had been received prior to the original cut-off date, September 4, 1946. All bids were rejected as inadequate and a new cut-off date established to receive proposals for purchase or lease on an "as-is, where-is" basis. Offers to lease for 5 years were received from Reynolds Metals Co., and Eastern Metals Products Co., and offers to purchase from Permanente Metals Corp., and Pend Oreille Mines and Metals Co. The plant was sold to Permanente for \$3 million. That company now operates Government-owned plants costing about \$89 million on leases which permit cancellation at a relatively early date. Sale to Permanente, it was felt, would tend to encourage the company to continue the leases, thereby keeping a competitor and possible ultimate purchaser in the industry.

Disposals of the five other reduction plants have not as yet been made. Their disposal prospects are discussed more fully in section V of the report. The disposal program required that Massena be offered on lease to Alcoa, subject to approval of the Attorney General, upon terms that offer no advantage over competitors. The Massena plant is at present shut down. The plant was declared surplus on July 1, 1946, and in accordance with the program, will be held by the Government until possibilities are determined for disposal when a low cost power supply becomes available. Any offer that is received will, of course, be submitted to the Attorney General under section 20 of the Surplus Property Act. Some of the electrical equipment has been removed to replace that taken from Troutdale and Spokane for return of the silver content to the United States Treasury.

Plancor 226-A1 at Queens, N. Y., which is the largest of the DPC reduction plants (8 pot lines) and represents an investment of \$33 million has failed to attract bids because of high power costs in the greater New York area. Pots have been removed from all potrooms. The Navy is presently utilizing it for nonaluminum purposes, in conjunction with Brooklyn Navy Yard operations, and expect to hold it until January 1948. The Burlington, N. J. facility (Plancor 226-A3) has been cannibalized, under WAA authorization, and the equipment is to be sold by the Office of General Disposal, WAA. Plant buildings can be leased or sold for uses other than aluminum production—the facility is currently being used as a WAA warehouse. Plancor 226-LA at Los Angeles is also being used as a warehouse, and some of the equipment in the plant has been transferred to Troutdale and Spokane. A cut-off date has been established for this plant, but if no suitable offer is received it would be well suited for multiple-tenancy purposes. Plancor 226-A4 at Riverbank, Calif., is also currently used for storage; the lack of cheap power in the area prevents the manufacture of aluminum, and the plant could be used for multiple-tenancy.

c. Fabricating Plants.—The program calls for holders of valid options or rights of first purchase to have first choice to exercise their

rights. First choice on plants not under option and second choice on plants subject to prior rights of others will be granted to any operators of Government reduction plants in order to enable them to integrate their business more favorably. Third choice will go to any other according to the recommended priorities.

Option Privileges

Although the disposal policy provides that holders of valid options or rights of first purchase will have the opportunity to exercise their rights, only Kinney Aluminum Co. did so. Altogether, eight plants and one segment of a plant have been sold or leased to their wartime operators. Of these, all had options or rights of refusal except Alcoa (purchaser of the Cressona, Pa., extrusion plant). General Motors failed to exercise its purchase rights on the foundry and the forging plant that it operated, and took these plants over after all option rights had expired.

The lack of sales under options can be explained partially by the fact that Alcoa was not given option rights on the 21 plants that it operated during the war.

The fabricating plants include rolling mills, foundries, and facilities for forgings, extrusions, rivets, and powder. The disposal of the more important plants is discussed in the body of the report; additional data are contained in appendix 2.

(1) *Rolling Mills (Sheet, Strip, Plate, Rod, and Bar).*—The Government built three plants for the rolling of aluminum ingot into sheet, strip, and plate and one for the rolling of ingot into rod and bar. They were:

Sheet

Planner No.	Dates covered surplus	Location	Reported cost	Actual capacity (000 lbs.)
1001	3-28-46	Spokane (Trentwood) Wash.	\$48,376,000	200,000
552	4-10-46	Chicago (McCook) Ill.	43,846,182	200,000
66	5-27-46	Literhill, Ala.	26,787,047	175,000 \$60,000

Rod

908	5-17-46	Newark (Heath) Ohio	\$22,181,397	300,000
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* Sheet.
* Rolled rod and bar.

Under the priority system set up in the program, the large fabricating plants would first be disposed of, by sale or lease, to competitors of Alcoa.

By September 1946, the two plants operated by Alcoa during the war, Trentwood and McCook, had been leased to Kaiser and Reynolds

respectively, and the Listerhill plant had been sold to its wartime operator, the Reynolds Alloys Co. Negotiations for the fourth rolling mill, Newark, Ohio, were in process as of November 30, 1946.*

Plancor 1061—Spokane (Trentwood) Wash.

Lessee: Kaiser-Frazier Corp.

	Total	Land and buildings	Machinery and equipment
Reported cost.....	\$48,378,096	\$18,402,428	\$30,975,668
Reproduction cost (estimated).....	32,803,000		

Production capacity, 288,000,000 pounds per year.

Number of bidders, 2. Floor area, over 2,250,000 square feet.

The agreement to lease to the Kaiser-Frazier Corp. July 1, 1946, for a 5-year period carries provisions for a 2-year renewal and an option to purchase. Lessee can terminate at the end of the first year upon 90 days' prior written notice or at the end of any subsequent year upon 6 months' notice. Rental for the first year was set at \$250,000, or 5 percent of net sales, whichever is higher, and the minimums were graduated upward to a peak of \$2,667,000 for the fifth and successive years. The WAA agreed to expend \$115,000 to place the plant in operating condition. Another offer to lease or buy the plant had been received from Reynolds, contingent upon the acceptance of Reynolds' offer to lease the reduction plant at Spokane. The latter was leased to Kaiser Cargo, Inc., whereupon the offer lapsed.

Rolling operations were begun on July 1, 1946. It is understood that Kaiser plans to run the plant at its rated capacity of 24 million pounds per month, to produce aluminum sheet for civilian use, largely in the production of automobiles. However, operations will depend on the supply of raw ingot from Kaiser's Mead reduction plant at Spokane, 6 miles away, and from Tacoma, as well as the supply of scrap available to the company. Power for both plants will be supplied by the Bonneville Power Administration.

Plancor 652—Chicago (McCook), Ill.

Lessee: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost.....	\$43,546,182	\$19,452,456	\$24,093,726
Sales and transfers.....	621,381		
Net cost.....	43,912,061		
Reproduction cost (estimated).....	31,028,000		
Fair value (estimated).....	31,028,000		

Production capacity, 288,000,000 pounds per year.

Number of bidders, 4. Floor area, 2,344,300 square feet.

* A letter of intent to lease the Heath plant was signed by Reynolds on December 13, 1946.

An offer to purchase the plant for \$30,135,000 was received from Alcoa, and offers for lease from Reynolds, McNulty-Haney, Midland, Mich. (for part of the plant), and General Motors (part of the plant). The latter two offers were not considered acceptable in view of the recommendation in the program that priority was to be given to purchasers or lessees desiring to operate the facilities for the fabrication of aluminum. The plant was leased to Reynolds as a prospective competitor of Alcoa. The lease, effective June 1, 1946, runs for 5 years, and carries the privilege of renewal for another 2 years and an option to purchase. It can be canceled by lessee at the end of the second year. Rentals for each year are 5 percent of net sales, with minimums graduated upward from \$750,000 for the first year to \$2,482,312 for the fifth year. This last figure is equal to 8 percent of the present estimated reproduction cost of the entire plant. The plant rehabilitation cost of about \$110,000 is to be advanced by the lessee and deducted from the rental. Rolling operations were begun on June 1, 1946.

Plancor 65—Listerhill, Ala.

Purchaser: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost	\$20,767,067	\$7,941,000	\$12,826,100
Reproduction cost (new) (estimated)	17,648,870	5,745,472	11,903,398
Reproduction cost (depreciated)	8,584,972	4,000,000	4,584,972
Fair value (estimated)	7,000,000		
Sales price	7,000,000		

Production capacity, 78,000,000 pounds of sheet, coil, and rod per year.

Number of bidders, 1. Floor area, 885,000 square feet.

The Listerhill plant is the only one of the four rolling mills which had not been shut down; Reynolds continued operations at the plant on an interim lease after the wartime lease was terminated. Sale of the plant to Reynolds was made during the time the company had the right of first refusal. Other offers were made, probably because the plant is adjacent to the privately owned Reynolds alumina and reduction plants, and it is a scrambled facility in that it includes Reynolds-owned equipment in addition to the land, buildings, machinery and equipment owned by the RFC. Operations at the plant will be integrated with the alumina and ingot plants, and the company plans to expand activity there into finishing operations and the manufacture of fabricated products.

Plancor 936-F3—Newark (Heath), Ohio

Lessee: Reynolds Metals Co.

	Total	Land and buildings	Machinery and equipment
Reported cost	\$22,181,807	\$11,000,180	\$11,181,715
Present normal reproduction value (estimated)	16,230,075		

Production capacity, 300,000,000 pounds rolled rod and bar per year.

Number of bidders, 1. Floor area, 1,224,943 square feet.

Negotiations for the leasing of this plant to Reynolds Metals Co. were still under way as of November 30, 1946, with the lease to take effect when the plant is put into operating condition.⁵ This plant is accordingly not included in the tables dealing with disposals. The only bid came from Reynolds, which submitted an offer to lease the plant at the end of August, 1946. This aluminum rod and bar mill was the only one of its type that was built by the Government, and its disposal was hampered by the lack of demand for aluminum rolled rod and bar, which is ultimately used in forgings, at this time. Reynolds proposed to use primarily remelting and casting facilities in order to supplement the slab casting facilities at the Reynolds-leased McCook plant in Chicago. Lease of the plant to Reynolds would afford increased production of sheet products at McCook through the finishing of Newark cast slabs. The proposed lease would be for 5 years, with an option to purchase at any time within the first 4½ years. Rentals for each year would be 5 percent of net sales, except that on semifinished material processed in the furnaces and cast house and moving for further finishing to any of the plants leased by Reynolds from the Government, upon which the Government receives a rental of 5 percent on net sales, the rent shall be 1 percent of net sales, with minimums set at \$200,000 for the first year and graduated upward to a peak of \$500,000 for the fifth year. Provision has been made for the sublease of 450,000 square feet of plant area for storage purposes to the Owens-Corning Fiberglass Corp.

(2) *Foundries*.—The Government invested nearly \$50 million in aluminum foundry capacity during the war, primarily in six aluminum cast cylinder-head plants, but also in a permanent mold foundry and two general purpose sand casting foundries. These plants were as follows:

Plant No.	Date declared surplus	Location	Reported cost	Annual capacity (000 lbs.)
<i>Sand casting foundries</i>				
1208	1-16-46	Bedford, Ind.	\$2,765,765	10,300
1589	6-17-46	Cleveland, Ohio	1,997,722	12,300
<i>Permanent mold foundries</i>				
1409A	2-25-46	Springfield, Mass.	3,112,000	8,000
2087	2-18-46	Vernon, Calif.	168,000	1,800
<i>Cast cylinder head foundries</i>				
1214	1-4-46	Kansas City, Mo.	8,270,195	42,000
254	6-17-46	Dearborn, Mich.	7,924,070	30,100
304	2-21-46	Flint, Mich.	9,017,141	43,300
397	2-25-46	Cleveland, Ohio	4,399,145	14,400
792 (part)	2-21-46	Chicago, Ill.	7,473,000	24,000
40 (part)	6-13-46	Lakeland, Ohio	6,416,000	46,300

¹ Preliminary.

⁵ A letter of intent to lease the Heath plant was signed by Reynolds on December 12, 1946.

There has been some difficulty in effecting disposition of these plants. One of the two sand foundries, Plancor 1208, Bedford, Ind., was sold to the original lessee, General Motors, for \$1.1 million, for use as a commercial steel drop forge plant. Plancor 1989 at Cleveland has recently been disposed of to the National Bronze & Aluminum Co. These two plants are not considered key fabricating installations, and the total investment in them by the Government was relatively small, approximately \$4 million.

No interest having been displayed by prospective purchasers in the permanent mold foundry, Plancor 1409A, at Springfield, Mass., for the production of aluminum castings, the land and buildings were sold to the Indian Motorcycle Co., Springfield, Mass., for the manufacture of motorcycles. The second permanent mold foundry, Plancor 2087, at Vernon, Calif., is being purchased for \$153,000 by the Kinney Aluminum Co., the wartime operator, under its option privileges.

(3) *Forging Plants.*—The Government built seven forging plants and began construction on an eighth which was never completed. They were as follows:

Plancor No.	Date declared surplus	Location	Reported cost	Annual capacity (000 lbs.)
1148-1	2-21-45	New Castle, Pa.	26,220,280	21,100
1148-2	2-25-45	Canonsburg, Pa.	26,642,147	14,000
1277	2-25-45	Monroe, Mich.	12,874,002	41,000
1395	2-5-45	Erie, Pa.	5,325,539	15,000
1643	2-14-45	Anderson, Ind.	4,290,280	37,000
646	4-15-45	Saginaw, Mich.	2,702,949	24,000
2023	7-17-45	Louisville, Ky.	2,157,495	2,400
1765	10-30-45	Massillon, Ohio	798,797	(*)

(*) Never completed.

Three plants have been sold, Plancor 2023 at Louisville to the Reynolds Metals Co. for \$1,470,000, Plancor 1765 at Massillon, Ohio, which had never been completed, to the Massillon Aluminum Co. for the manufacture of steel kitchenware, for \$375,000, and Plancor 1277 at Monroe, Mich. (land and buildings), to the Kelsey-Hayes Wheel Co. for \$2,450,000. The two-story portion of the building at Saginaw was leased for a short time to General Motors, Chevrolet Division, the wartime operator. Space at Plancor 1148-2 at Canonsburg, Pa., has been leased to three concerns under a multiple-tenancy project authorized at that plant, and some of the aluminum forging equipment has been removed for cannibalization. Plancor 1395 at Erie, Pa., is in operation under an interim lease on a year-to-year basis, to its wartime operator, Aluminum Forgings, Inc.

The plants at New Castle, Pa., and Anderson, Ind., as well as most of the Saginaw plant, are at present undisposed of, and not in operation. The land and buildings at the plant at Monroe, Mich., were sold for \$2,450,000 to the Kelsey-Hayes Wheel Co. About \$500,000 in machinery and equipment will also be purchased.

(4) *Extrusion Plants.*—The Government built seven extrusion plants, of which one was sold and four are under long-term leases, while one is under interim lease; five are currently in operation. The plants are as follows:

Plant No.	Date declared surplus	Location	Reported cost	Annual capacity (000 lbs.)
773-2	7-1-45	Phoenix, Ariz.	\$23,322,321	65,700
773-1	10-2-45	Cressona, Pa.	26,025,294	55,700
234	6-12-45	Adrian, Mich.	14,922,626	25,000
238	6-25-45	Los Angeles, Calif.	5,267,873	11,700
2380	4-12-45	Grand Rapids, Mich.	5,729,724	10,000
1778	7-31-45	Halethorpe, Md.	7,612,048	14,000
47	10-9-45	Louisville, Ky.	6,294,651	45,000

The disposition of surplus extrusion plants has been more advanced than that of other types of aluminum fabrication facilities, except sheet mills; because of the shortage of aluminum extrusion capacity existing throughout the country. The accelerated housing activity has created a large demand for extruded products, particularly shapes for windows, doors, house trim, and tubing for metal furniture. Reynolds has obtained 5-year leases on Plant No. 2380 at Grand Rapids, and on the Alcoa-operated Plant No. 773-2 at Phoenix. Reynolds has an interim lease on the Louisville plant, expiring December 31, 1946. Bohn Aluminum and Brass Corp. has leased for 10 years the Adrian, Mich., plant which it operated during the war. The other Bohn-operated plant, at Los Angeles, has been leased to the Harvey Machine Co. All of these plants will continue to operate in the aluminum extrusion field. Halethorpe, at Baltimore, is the only Government-owned extrusion plant still held in stand-by condition.

Of special interest was the sale early in August of the \$26 million plant at Cressona, Pa., to Alcoa in the absence of other acceptable offers. The wartime lease of this plant to Alcoa, terminated October 1, 1944, but effective to March 28, 1945, contained no purchase options. Subsequently it was leased as an ordnance repair plant, and afterward operated by the Army itself as a repair depot. The land, improvements and buildings originally cost the Government \$11,479,000, and machinery and equipment, most of which has been removed, \$14,547,000. The depreciated reproduction cost was estimated as \$6,995,000. Under the terms of the sale, Alcoa is paying \$6,500,000 cash for the land and buildings; 60 percent of the original f. o. b. cost for the removed machinery which is available, and 60 percent of the Government-installed cost of the machinery remaining on the premises. The plant was constructed to extrude 55,700,000 pounds of shapes and to produce 14,700,000 pounds of finished tubing annually. The proposed disposition was submitted to the Attorney General under section 20 of the act. His views are given in the letter in appendix 1.

(5) *Powder Plants.*—The Government built four aluminum powder plants, two owned by the Defense Corporation and two owned by the Navy. They are:

Plant No.	Date declared surplus	Location	Reported cost,	Annual capacity (000 lbs.)
DPC 2151	6-24-46	Rochester, Mich.	\$353,101	27,120
1973	7-13-46	Cleveland, Ohio	1,026,442	37,220
Navy 46-540	3-23-46	Glassboro, Pa.	1,000,000	33,330
33	4-30-46	Webster Grove, Mo.	370,000	35,340

1 Withdrawn.

To date only one disposal has been made, namely Plant 2151 at Rochester, Mich. The land and buildings of this plant were sold to a manufacturer of small household articles. The aluminum powder plant at the National Smelting Co. plant at Cleveland, is associated with the magnesium facilities which have been leased to the wartime operator. The aluminum powder facilities still remain in inventory. The Webster Grove plant has been withdrawn from surplus by the Navy Department for transfer to the Veterans Administration for warehousing and printing purposes.

(6) *Rivet Plants.*—The Government built one aluminum rivet plant and rivet-making facilities in five DPC aircraft plants. They were:

Plant No.	Date declared surplus	Location	Reported cost	Annual capacity (000 lbs.)
106	7-18-46	Buffalo, N. Y.	(1)	000
130	2-27-46	San Diego, Calif.	(1)	1,400
545	5-26-46	Dearborn, Mich.	(1)	4,000
536	6-22-46	Akron, Ohio	(1)	90
178	8-9-46	Detroit, Mich.	\$354,152	720
1193	7-18-46	Burbank, Calif.	(1)	200

1 Cost of aluminum rivet facilities not separable from cost of the aircraft plant.

It is unlikely that the rivet facilities in aircraft plants will be disposed of separately, or for the production of aluminum rivets. Space in one of the aircraft plants, San Diego, is being leased out under an authorized multiple tenancy project. No disposals have taken place at the other four aircraft facilities. Land and buildings at the independent rivet plant at Detroit has been purchased by its wartime operator, the Huck Mfg. Co., for \$71,000. Machinery and equipment at the plant were also sold, priced under the Clayton formula. The plant will continue in the manufacture of aluminum alloy rivets and special fasteners.

5. *Measures of Government Support—*a. *Bauxite Supply.*—To facilitate the success of new operators in meeting basic problems, three general measures were to be undertaken by the Government. The first of these relates to the supply of bauxite. Throughout the war, Reynolds experienced difficulty in obtaining bauxite at a cost com-

parable to that of Alcoa. The supply of high grade ore in this country was largely controlled by Alcoa, and since the war with Japan upset Reynolds' plan to import at a low price high grade bauxite from the Dutch East Indies, the company was forced to obtain lower grade ores from Alabama, Arkansas, and Georgia, and to purchase some high grade ore from South America at war prices. The Surplus Property Board Report to Congress in September 1945 stated that—

a new competitor in the aluminum industry can be really independent only if he has his own reserves of bauxite in sufficient quantity and proper quality economically accessible to the alumina plant at delivered costs comparable to Alcoa's costs. A permanent supply of high grade ore can only be obtained abroad. But for some years an arrangement is possible that can give a new producer a start in this country; i. e. using medium-grade ore in Arkansas processed at the Government-owned alumina plant at Hurricane Creek. Most of the suitable ore for aluminum is found in Arkansas and is controlled by Alcoa. * * * The interim solution for a new producer is to obtain alumina by operating the Hurricane Creek alumina plant, or buying alumina from another operator at that plant. The ore supply would consist of about 2,800,000 tons of Government-owned, medium grade ore now held in stockpile for use at Hurricane Creek, and a supplemental supply of similar ore from independent mining producers in Arkansas.

The program therefore specified that the Government stockpile of bauxite at Hurricane Creek will be available to the plant operator. In addition the War Assets Administration was to ask the help of the appropriate Federal agencies in exploring the possibilities of securing foreign ore by means of international agreements.

On November 30, 1945, as a result of negotiations between the Reconstruction Finance Corporation and the Reynolds Metal Co., looking toward the leasing of the Government-owned Hurricane Creek alumina plant, it was agreed that "the lease would contain a clause making the bauxite stockpile accessible" to the proposed lessee. On January 10, 1946, the Reconstruction Finance Corporation, as a disposal agency, proposed to the Reynolds Metal Co. in writing certain terms and conditions to be contained in the lease, including the understanding of November 30, 1945, and adding that "Arrangements satisfactory to the Reconstruction Finance Corporation shall be made with Reynolds for its use of the Reconstruction Finance Corporation's stockpile of bauxite at a price to be mutually agreed upon." The proposal was accepted by Reynolds.

Under date of July 12, 1946, the Director of the Office of War Mobilization and Reconversion advised the War Assets Administrator that the Government was committed to making the bauxite stockpile available to the operator of the Hurricane Creek plant, setting forth the extent of the commitment.

On July 15, 1946, the Reconstruction Finance Corporation declared surplus to the War Assets Administration approximately 2,785,585 long tons of domestic bauxite now stored in Arkansas.

Under date of July 18, 1946, the War Assets Administrator was

directed by the Director of War Mobilization and Reconversion to authorize the appropriate disposal agency to make the bauxite available to the operator of the Hurricane Creek plant to the extent previously outlined.

Under Regulation 17, Order 4, dated July 19, 1946, the WAA is authorized and directed to hold, for a period not to exceed ~~one~~ years, approximately 2,785,585 long tons of domestic bauxite declared surplus to it on July 15, 1946, by the RFC, to arrange for disposal and to dispose of, such bauxite to the operator of the alumina plant at Hurricane Creek, Ark., only, in quantities sufficient to provide for economical operation of the plant after reasonable efforts have been made by the operator to acquire bauxite from commercial sources at fair prices. Such dispositions are to be made at the fair value of bauxite of the particular type and grade.

On August 14, Reynolds requested 200,000 long tons of bauxite in the stockpile to be made immediately available without qualifications except that they would pay for the amount withdrawn at a fair value. The 200,000 tons was to be considered as a revolving supply, and that the amount would provide a sufficient cushion so that their operation would not be unduly handicapped. Reynolds stated that their consumption of bauxite when four potlines at Troutdale go into operation would amount to approximately 60,000 long tons per month, of which their own mine operations could supply about one half. On August 27, 1946, the WAA approved the sale of 100,000 long tons from the stockpile, subject to a price to be determined by WAA and the filing of a monthly report by the purchaser. The sale terms required that Reynolds pay \$5 per ton in advance, pending the establishment of the fair value.

The WAA discussed with the State Department the possibilities of securing foreign ore by means of international agreements. The State Department has indicated that it will not treat bauxite as a matter of special international agreement, but will assist any private company in negotiations for foreign ore.

b. *Government Engineering Investigations.*—The second measure of Government support provides that engineering investigations will be made to determine changes necessary to place plants in the most advantageous position to compete, and that the Government will finance such changes when the costs appear to be recoverable.

The WAA is carrying out this policy. It is considering building a dock at the Baton Rouge alumina plant, and is making minor changes and repairs (such as relining pots at the reduction plants) and capital additions (i. e., a circuit-breaker at the Spokane reduction plant, and power generating equipment at Baton Rouge) where necessary. Engineering investigations of Baton Rouge and Hurricane Creek alumina plants were completed and one dealing with the Tacoma reduction plant was authorized to ascertain whether the wartime

operating costs could be substantially reduced, but was suspended when bids were received for the plant.

c. *Other Measures.*—Miscellaneous spare replacement parts having an inventory value of approximately \$1,065,000, now in storage and suitable for application in many of the leased or sold plants will be made available by WAA to the operators of these plants at Government inventory post, thus enabling them to maintain full production.

6. *Surplus Secondary Metal Policy.*—The third measure of Government support was concerned with controlling the disposal of surplus secondary metal (including scrap) so that its maximum use would be promoted without discouragement of new primary aluminum operators. The Surplus Property Board had expected that secondary metal might amount to as much as 2.4 billion pounds. It was feared that, if dumped on the market, this huge supply would be unsalable, would destroy the price level, and would force a contraction of the primary aluminum industry. The inventory of secondary metal was expected to generate from nonsalable aircraft, contract terminations, components and parts of aircraft, metal held by aluminum fabricators and scrap dealers. Much of it was expected to be subject to the disposal policies of the Surplus Property Board and its successors. In view of the expected huge scrap inventories, the Board proposed to adopt four measures to protect new producers:

1. The Board to issue a periodic statement to industry of current and prospective inventories of aluminum metal, in the hands of both private industry and Federal agencies, to enable large consumers of metal to plan their production schedules ahead.

2. The Board to use pricing powers provided under SWPA No. 5, to assure industry of an adequate supply of secondary ingot at a proper price, determining the exact figure in consultation with various industrial consumers of aluminum.

3. The Board to take appropriate measures in connection with the disposal of Government-owned aluminum to spread the supply, prevent hoarding, and stimulate competition in processing metal.

4. The Board will recommend that metal other than standard primary ingot or pig be exempt from stock-pile arrangements so that it may be distributed to industry in accordance with the foregoing policies.

However, the stocks of secondary metal which have appeared thus far have not approached the quantity originally expected, for several reasons.

First, the number of airplanes which were expected to be declared surplus was originally estimated at over 100,000 to yield approximately 1 billion pounds of surplus scrap. During the past year, from September 1945 to September 1946, there were actually about 56,000 planes declared surplus, of which 12,000 were sold as is, leaving some 44,000 not salable. The RFC has scrapped about 9,000 of these, leaving 35,000 to be disposed of by WAA. But of this quantity only about 23,000 planes, containing large amounts of recoverable aluminum, remained finally in the hands of WAA. In addition there is a

reserve of planes being held by the Army and Navy which may subsequently be declared surplus, but which cannot be estimated at present. Most of the 23,000 planes, containing approximately 200 million pounds of available aluminum scrap, were sold to the five highest bidders on August 27, 1946. These buyers are to dispose of the scrap within 18 months. Some bids were received from firms in the aluminum industry but the cost and difficulties involved in dismantling, and the time limit imposed were discouraging factors, leading to lower bids, since the sale involved clearance of entire fields where the planes were stored. Approximately 32 million pounds of aluminum scrap resulting from the breaking up of surplus planes by the Government were disposed of at a sale in Oklahoma.

Second, unusable contract termination inventories have been sold directly by contractors or owning agencies to local scrap dealers, with practically no information available as to quantities which have thus been dissipated. Third, prior to the war, the production of wrought aluminum in the forms of sheet, strip, extrusions, bar, and tubing, almost solely by the Aluminum Co. of America, was confined to alloys produced from virgin ingot with a portion of segregated scrap. Secondary scrap of mixed or unknown alloys such as results from the salvaging of airplanes was used almost exclusively by the smelting industry, which, by processes of smelting and sweetening, produced ingots for the use of aluminum foundries. This pattern has now been changed. As a result of experience and knowledge gained by the Light Metals Division of the British Ministry of Aircraft Production in the recovery of aircraft aluminum by the use of sloping hearth (liquation) furnaces, secondary airplane scrap may now be successfully used in the production of low-cost sheet and extrusions useable for housing and construction purposes. Consequently, the secondary smelters which formerly consumed almost all of this grade of scrap now find they are competing for its acquisition with the primary producers. Thus, what was in 1945 considered to be a vast over-supply to be released by the government over a period of years has, in 1946, become a critical shortage urgently needed to fill the gap until such time as the normal generation of industrial scrap is resumed.

Approximately 240 million pounds of aluminum scrap, emanating chiefly from contract terminations and wrecked aircraft, had been declared surplus by owning agencies to WAA and its predecessors from Oct. 2, 1944, through August 1946. Of this total, 75 percent has been sold by the Metals Division of WAA. Sales have been currently proceeding at the rate of 25-30 million pounds per month, and the estimated September 30 inventory totaled about 30 million pounds of aluminum scrap. Further sales of surplus scrap by the owning agencies may substantially increase the supply, but information from these on which to base reliable forecasts is not available.

In addition to this scrap, it is estimated that approximately 200 million pounds of scrap can be expected from the aluminum content of the disposed aircraft referred to above. Probably not more than about another 30-40 million pounds contained in unusable aircraft still to be declared surplus can be expected. The amount which may flow to WAA under contract terminations of owning agencies as a result of inability to sell directly at, or above, current floor prices, set by WAA in Regulation 12 (as amended), is uncertain, but it would appear not to be great since the present shortage for scrap offers good disposal possibilities. The Secretary of State on September 24, 1946, granted permission for the importation of 1,362 tons of aluminum scrap and 521 tons of sheet, bar and tubing from Canada. Possibly as much as 25-30 million pounds of aircraft scrap in Europe may find its way back to this country after reduction to impure ingot and sale to private purchasers abroad by the Government.

These figures indicate a total of about 500 million pounds of secondary aluminum, flowing through Federal channels, chiefly from aircraft and contract terminations, compared with the 1,939 million pounds originally estimated.

There was expected to flow into the market, through private channels, about 450 million pounds of secondary metal from the aluminum aircraft and other consuming industries. The WAA and the CPA attempted to set up a reporting system for such privately disposed metal, but since this would have caused undue delay in contract termination, it was not done, and hence adequate information is not available to trace the movement of this metal.

No reports are available on quantities sold by the aircraft industry for Army and Navy account, or by the Army and Navy themselves. Under contract termination procedure, contractors sold directly and not through Government channels, but there were declared surplus to WAA from producers and fabricators within the aluminum industry about 22 million pounds, and it is understood that about 150 million pounds was retained by firms within the industry or acquired as the result of contract terminations. Thus a total of some 700 million pounds is traceable out of the previously estimated 2.4 billion pounds of secondary aluminum.

The fact that the expected large inventories of scrap failed to appear or be reported brought about an approach in regard to the program of protective measures for new primary producers somewhat different from that previously contemplated.

1. The statement of inventories proved to be impossible to make since the Office of Contract Settlement could not provide statistical information. Other available statistics were inadequate.

2. The pricing powers provided under SWPA Regulation 5 were embodied in a new SPA Regulation 12 which established floor prices for several categories of aluminum scrap to be sold either by owning

agencies or disposal agencies. Actual prices rose higher when the demand exceeded the supply.

3. SPA Revised Special Order 26 of January 31, 1946, limited the sale of surplus secondary aluminum by the Government to 5 million pounds to any individual buyer (including subsidiaries) in any one month, without the prior written approval of the Surplus Property Administrator. SPA Regulation 12, Order 1, January 18, 1946, instructed the owning agencies and the RFC to file with Surplus Property Administrator a report of each sale of 500,000 pounds or more. On March 27, 1946, this order was revised to include each sale of 250,000 pounds or more.

Under these regulations, disposals of scrap by WAA for the period January through September 1946 have totaled 142 million pounds. Of this amount, 85 million pounds were sold to the 10 largest purchasers, with the balance of 57 million pounds distributed among approximately 60 smaller smelting and fabricating concerns. Any of the latter was afforded the opportunity, however, of acquiring up to 5 million pounds per month.

To prevent undue acquisition of Government metal by individual companies there was established, with the cooperation of the industry and the Bureau of Mines, a system of voluntary reporting of inventory, consumption, and monthly purchases of aluminum scrap from all sources.

4. The acquisition by the Army and Navy Munitions Board of aluminum for permanent stockpile has not been extended to metal other than standard primary ingot or pig, thus leaving secondary metal free for distribution to industry. Under WAA Regulation 17 of August 21, 1946, which implements the Strategic and Critical Materials Stockpiling Act of July 19, 1946, certain specified forms of primary and secondary aluminum pig or ingot are declared to be strategic and critical materials. Upon declaration as surplus by owning agencies they are to be disposed of either by transfer to the stockpile, or direct sale to satisfy current industrial deficiencies as determined by the Civilian Production Administration.

The Administration is now taking steps to rescind revised Special Order No. 26, which provides that not more than 5 million pounds of aluminum shall be sold to any individual buyer in one month. This is being done in order to accelerate disposals, and also in view of the low present inventory of aluminum scrap the wide regional distribution of that inventory, and the small amount of anticipated new declaration of surplus. The threat of concentrated buying by one or two large companies in the aluminum field, which gave rise to the order, has not materialized, and a wide distribution among large and small buyers has been achieved in what has heretofore been sold. Elimination of Order 26 will do away with certain reporting requirements which tend to retard disposal. The Administration believes that the volume

of surplus secondary metal which is likely to come into the market in the future through disposals will be insufficient to discourage new primary metal producers, and under present conditions may, in many cases, serve as a support to their operations. Its equitable distribution can be attained under procedures set up under WAA Regulation No. 21 governing pricing and distribution policy for production materials, and Regulation No. 2 and the provisions of the Surplus Property Act which protect priority claimants, and safeguard the interests of the small buyer.

7. Scrambled Equipment in Private Plants.—During the war, in order to stimulate increased production, equipment was purchased with RFC funds and installed in privately-owned aluminum plants. The program of September 21, 1945, provided that in the disposition of such equipment, first choice was to go to the owners of the plants in which it was located. Equipment not taken by the plant owners was to be disposed of according to the same priorities of disposal as the Government-owned aluminum plants.

The first report to the Congress estimated the total value of scrambled equipment installed in 36 private plants (including two alumina plants) to have been about \$63,400,000, as follows:

Type of plant	Number of installations	Value (\$000)
Alumina from bauxite.....	2	\$28,300
Tube drawing.....	2	2,000
Forgings.....	9	11,197
Band castings.....	14	14,229
Permanent mold castings.....	3	304
Cast cylinder heads.....	5	9,065
Powder.....	1	67
	36	63,400

In the present report, the two plants for producing alumina from bauxite and the equipment they contain are included among the disposal of plants. Moreover, revised and more complete information has been furnished by the Office of Defense Plants, RFC, indicating that out of a total investment of \$16.5 million, scrambled equipment costing the Government \$14.6 million is to be distributed from a total of 31 installations. Appendix 3 lists these installations, the value of equipment sold to private plant owners and other private purchasers by RFC, leases or transfers to other private plants of Government agencies, sales for scrap or salvage, declarations of surplus to WAA, and the value of material remaining at the plant site. The latter includes the cost of foundations and other nonseverable improvements.

Total disposals by November 1, 1946 amounted to \$3 million, of which only \$2 million was acquired by the plant owners. Direct sales by RFC to private purchasers accounted for \$0.7 million, while \$4.4 million was declared surplus to WAA. The direct sales by RFC

were largely completed to March 25, 1946, when WAA was established, being made during the period when RFC was a disposal agency. Such sales of equipment declared surplus were, however, subject to clearance with the Surplus Property Board.

Alcoa had no options on equipment installed in its own plants, and preference was frequently given to other bidders as against Alcoa. It is currently negotiating for about \$2 million worth of equipment located in two of its own plants but otherwise has acquired little from the RFC.

About \$4.4 million in scrambled equipment has been declared surplus to WAA and some has been moved to WAA warehouses. When received, it becomes a part of the general WAA inventory of industrial equipment, and is not carried on the books separately. It is thought that possibly 60 to 70 percent may still be in the hands of WAA. The equipment is largely of a character generally useful for industrial purposes. The Office of General Disposal, WAA, follows a policy in its disposition which takes into account the special priorities provisions of the aluminum program, as well as the general disposal policies governing producer goods which are contained in WAA Regulations 2 and 21, to see that priority claimants and small business are protected. Very little of the equipment declared surplus has found its way into the hands of Alcoa, and smaller concerns have obtained a substantial share. Alcoa's total purchase of equipment in privately-owned plants was approximately \$1,200,000, of which about \$240,000 worth was from plants other than their own scrambled facilities at Vernon, Calif., New Kensington, Pa., and Cleveland, Ohio. This does not include equipment which Alcoa may purchase for rehabilitation of the Creusote plant.

VIII. CONCLUSION

The accomplishments of the past year in the disposal of aluminum plants and facilities represent substantial progress toward the attainment of most of the major economic objectives of the program presented to the Congress in the report of the Surplus Property Board, of September 21, 1945. The distribution of productive capacity in surplus plants to new independent producers represents a major step toward the establishment of a competitive aluminum industry, but production in these plants and the marketing of their output will eventually determine this issue.

The plants remaining to be disposed of are chiefly those in the fabricating group. Future prospects for these plants will depend upon the extent to which the present large demand for aluminum is sustained.

The War Assets Administration will, within the framework of the

policy and program set forth in the first report to the Congress, continue to follow a course of endeavoring to establish competition in the aluminum industry and to achieve the pertinent objectives of the Surplus Property Act.

Table 1.—Government Investment in the Aluminum Industry, and Disposals—
Nov. 30, 1946
(Millions of dollars)

	Total investment	Total	Sales	Leases	Equipment sales and transfers	Balance
Total.....	714.1	387.3	79.6	386.3	11.7	
Office of Defense Plants, RPO: ¹						
Plants.....	684.0	367.3	79.6	386.9	11.7	379.7
Scratched facilities.....	30.1	2.0	2.0	0.3		12.5
Navy Department:						
Plants.....	1.4					1.4
Scratched facilities.....						
IFC loans.....	94.5					2.4

¹ Excludes Government investment in power plants and lines, and housing erected in connection with Government-owned aluminum plants. This investment was estimated by the Surplus Property Board to total approximately \$17 million.

² Includes a Navy aluminum powder plant transferred to the Veterans' Administration.

³ Includes three experimental aluminum plants which have not been declared surplus.

Table 2.—Value of Surplus Aluminum Plant Disposals as of Nov. 30, 1946
(Millions of dollars)

Type of plant	Government investment in aluminum plants	Total disposals	Leases	Sales	Equipment sales and transfers	Sales price	Value of plants to be disposed of
Total complete plants ¹	684.4	367.6	386.0	79.6	11.7	38.5	379.1
Aluminum:							
From hearings.....	66.7	25.0	25.0		1.7		7.3
From other sources.....	12.5	(?)	(?)				12.5
Lines-and-shed plants.....	39.5	25.4		22.0	3.4	2.5	4.7
Aluminum reduction.....	184.0	22.4	79.9	4.3	2.0	2.3	101.6
Sheet, strip and plate.....	112.7	112.7	91.3	20.3	0.6	7.0	22.2
Rolls and bar.....	22.3						22.3
Forgings.....	75.0	14.0	3.0	8.1	1.0	4.3	65.6
Castings:							
Sand.....	4.7	2.8		2.8		1.1	1.9
Permanent mold.....	2.3	1.6		1.5		0.0	1.5
Cylinder heads.....	61.5	15.4	10.3	4.3	0.9	2.1	26.1
Extrusions.....	164.8	75.7	62.4	11.5	0.6	4.3	31.1
Rivets.....	0.5	0.6		0.6		0.3	0.3
Powder.....	2.8	1.0	0.1	0.3	0.4		1.5

¹ Excludes housing projects and power equipment. Includes 3 Navy plants valued at \$1.4 million.

² Only one of the four experimental aluminum clay plants has been declared surplus to date. It represents \$1,945,000 of original investment.

³ Under \$20,000.

⁴ Does not include cost or sales price of machinery in the Coosawhatchee, Ga. extrusion plant. Machinery was removed from plant in 1944; amount recovered will be sold to Alcoa, but information on recoverable amount is not currently available.

⁵ Does not include rivet facilities built into five aircraft plants. Investment in this rivet capacity is not separable from the value of the total aircraft facilities.

⁶ Includes equipment of Hord 120 powder plant at Vicksburg, Mo., to the Veterans' Administration.

Table 3.—Number of Complete Plants Disposed of as of Nov. 30, 1946

Product	Number of Government plants				
	Built	Disposed of—			To be disposed of
		Total	Sold	Leased	
Total Government-owned plants.....	56	28	14	14	2
Alumina from bauxite ¹	4	4	2	2	
Experimental—Alumina from other ores.....	4				
Aluminum reduction.....	9	4	1	3	
Plate, sheet, and strip.....	3	3	1	2	
Rolled rod and bar.....	1				
Forgings.....	8	3	3		
Castings:					
Sand.....	2	1	1		
Permanent mold.....	2	2	2		
Cylinder head.....	6	3	1	2	
Extrusions.....	7	6	1	4	
Rivets.....	6	2	1	1	
Powder.....	4	1	1		

¹ Includes two lime-soda-sinter plants adjacent to the Alcoa-owned alumina plants.² Some space in one plant leased to the Bureau of Reclamation.³ NOrd 1230, at Webster Grove, Mo., has been withdrawn from surplus by the Navy for transfer to the Veterans' Administration.Table 4.—United States Aluminum Industry as of 1939, Annual Capacity¹

Product	Amount (thousands of pounds)				Percent			
	Total	Alcoa	Ray-nolds	Other	Total	Alcoa	Ray-nolds	Other
Alumina from bauxite.....	800,000	800,000			100.0	100.0		
Primary aluminum.....	390,000	320,000			100.0	100.0		
Sheet, strip and plate.....	195,300	128,000	5,300	15,000	100.0	87.2	3.3	8.9
Rolled rod and bar.....	11,800	8,800			100.0	100.0		
Foli.....	15,700	2,000	7,700	1,300	100.0	43.3	48.0	7.7
Tubing.....	5,300	5,300			100.0	100.0		
Forgings.....	5,000	4,800		200	100.0	96.0		4.0
Castings—All types.....	25,000	22,000		3,000	100.0	28.0		72.0
Extrusions.....	15,400	15,400	(?)	2,000	100.0	81.8		18.2
Wire.....	n. s.	n. s.	n. s.	n. s.				
Cable.....	45,300	45,300			100.0	100.0		
Rivets.....	500	500			100.0	100.0		
Powder, paste and flake.....	n. s.	n. s.	n. s.	n. s.				

¹ Estimates based on data developed in several Government agencies.² Negligible.

n. s. Not available.

Table 5.—United States Aluminum Industry, 1944. Annual Capacity¹

Product	Amount (000 lbs.)			Percent		
	Total	Alcoa (private and government owned)	Reynolds (private and government owned)	Others (private and government owned)	Total	Alcoa (private and government owned)
Alumina from bauxite	4,993,000	4,004,000	300,000	—	100.0	96.9
Experimental—Alumina from other ores	157,700	—	—	157,700	100.0	—
Primary aluminum	2,327,357	2,124,137	101,730	41,500	100.0	91.3
Sheet, strip and plate	1,004,400	1,378,000	180,000	44,000	100.0	95.0
Roller rod and bar	512,400	732,000	80,400	—	100.0	90.1
Foil	63,372	18,000	37,000	17,772	100.0	38.4
Tubing	98,548	32,124	2,400	15,024	100.0	32.5
Forgings	984,688	216,000	2,400	216,140	100.0	45.8
Castings:						
Sand (excl. cylinder heads)	274,336	28,950	—	245,386	100.0	10.6
Permanent mold	151,800	28,300	4,000	120,200	100.0	18.8
Die	127,944	14,820	—	113,124	100.0	11.6
Cylinder heads	384,252	80,500	—	204,752	100.0	26.2
Extrusions:						
Rod and bar	70,204	15,000	34,000	21,204	100.0	19.8
Shapes	230,464	177,000	7,200	71,664	100.0	69.2
Tube blooms	173,944	138,000	4,300	31,644	100.0	79.3
Wire	20,002	45,000	300	4,732	100.0	90.0
Cable	32,504	20,000	—	12,504	100.0	60.6
Rivets	31,704	4,400	n. s.	27,304	100.0	25.4
Powder	181,904	12,000	19,200	106,704	100.0	6.2
Paste and slake	44,932	4,000	6,000	35,932	100.0	13.3

¹ Capacity data for privately built plants based on performance. Capacity data for Government-built plants based on designed capacity, except in the following cases: Reduction plants—a revised standard capacity rate of 24,000,000 pounds annually per pot-line has been estimated by the War Production Board. Sheet mills—capacity based on performance.

Table 6.—United States Aluminum Industry as of Nov. 30, 1946, Annual Capacity

Product	Amount (000 pounds)					Percent				
	Total	Alcoa	Reynolds (owned and leased)	Kaiser (owned and leased)	Others (owned and leased)	Total	Alcoa	Reynolds (owned and leased)	Kaiser (owned and leased)	Others (owned and leased)
Alumina from bauxite	4,993,000	2,140,000	1,784,000	1,000,000	—	100.0	43.7	35.9	20.4	—
Primary aluminum	1,535,357	528,127	440,730	267,500	—	100.0	34.6	29.1	14.3	—
Sheet, strip and plate	1,004,400	502,000	488,000	200,000	44,000	100.0	30.0	29.5	12.0	2.5
Roller rod and bar	512,400	422,000	80,400	—	—	100.0	82.3	15.7	—	—
Foil	63,372	18,000	27,000	—	17,772	100.0	28.4	42.6	—	29.0
Tubing	97,148	98,000	18,000	—	15,000	100.0	98.0	18.0	—	14.0
Forgings	984,688	178,000	2,400	—	179,000	100.0	28.5	—	—	29.0
Castings:										
Sand (excl. cylinder heads)	274,336	28,950	—	—	222,180	100.0	11.6	—	—	88.5
Permanent mold	151,800	28,300	—	—	120,200	100.0	17.4	—	—	82.6
Die	127,944	14,820	—	—	113,124	100.0	11.6	—	—	88.4
Cylinder heads	384,252	38,500	—	—	48,752	100.0	48.2	—	—	64.6
Extrusions:										
Rod and bar	70,204	15,000	—	—	22,204	100.0	28.4	—	—	61.6
Shapes	230,464	144,700	42,700	—	25,784	100.0	62.6	17.8	—	22.2
Tube blooms	180,944	110,000	37,000	—	33,944	100.0	60.4	17.8	—	12.1
Wire	20,002	45,000	300	—	4,732	100.0	90.0	—	—	9.5
Cable	32,504	20,000	—	—	12,504	100.0	60.6	—	—	40.0
Rivets	31,704	4,400	n. s.	—	16,044	100.0	34.4	—	—	65.6
Powder	181,904	12,000	19,200	—	27,904	100.0	30.4	32.0	—	47.0
Paste and slake	44,932	4,000	6,000	—	35,932	100.0	13.3	12.3	—	73.4

¹ Capacity distribution based on the assumption that all the privately owned plants which operated in the aluminum field during the war will continue to retain the same production capacity, although actually some may be converted to other uses. Capacity data for privately built plants based on performance. Capacity data for Government-built plants based on designed capacity, except in the following cases: Reduction plants—a revised standard capacity rate of 24,000,000 lbs. annually per pot-line has been estimated by the War Production Board. Sheet mills—capacity based on performance.

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Table 7.—Value of Surplus Aluminum Plants Awaiting Disposal as
Nov. 30, 1946

(Thousands of dollars)

Plant No.	Location	Original cost	Total disposal	Cost of re- maining surplus
Total		302,000	92,437	279,563
Aluminum:				
1271	Mobile, Ala.	14,100	2,900	4,000
22-AO	Baton Rouge	20,200	10,100	7,000
Experimental Alu- minum Clay:				
1281	Harleyville, S. C. ¹	2,470		2,000
1282	Salina, Ore.	2,000		2,000
1283	Salt Lake City, Utah	4,000	20	4,000
1284	Laramie, Wyo.	4,000		4,000
Aluminum Reduction:				
22-A-1	Elvertown, Calif.	11,000	601	11,000
22-A-1	Manassas, N. Y.	22,000	2,011	20,000
22-A-2	Washington, N. J.	10,750	200	10,000
22-LA	Los Angeles, Calif.	10,000	200	10,000
22-NY	Manassas, N. Y.	10,000	200	10,000
Rolling Mills:				
22	Neyrath, Ohio ¹	20,101		20,101
Foundries:				
1289	Cleveland, Ohio	1,000		1,000
1290	Dearborn, Mich.	7,000	201	7,000
1291	Louisville, Ohio	4,000		4,000
1292	Cleveland, Ohio	4,000	100	4,000
1293	Kansas City, Mo.	4,000	12,000	2,000
1294	Flint, Mich.	2,000	14,000	4,000
1295	Springfield, Mass.	2,115	1,000	1,000
Furnaces:				
1296-12	Columbus, Pa.	20,000	2,000	20,000
1297	Dearborn, Mich.	2,000	200	2,000
1298-1	Novosibirsk, Pa.	2,000	200	2,000
1299	Anderson, Ind.	2,000	100	2,000
1300	Eliz, Pa. (on interim lease)	2,000	100	2,000
1301	Albany, Mich.	12,075	0,415	7,000
Extruders:				
170-1	Columbus, Pa.	20,000	11,070	14,000
170-2	Albany, Mich.	15,000	13,000	2,000
170-3	Richmond, Va.	7,000	4	7,000
170 and 171	Louisville, Ky. (on interim lease)	6,000		6,000
Rivets:				
129	Mobile, N. Y.	300		300
130	Dearborn, Mich.			
131	Albany, Mich.			
132	Portland, Ore.			
133	Detroit, Mich.			
Powder:				
134	Richmond, Mich.	1,000	100	1,000
135	Cleveland, Ohio	1,000	447	1,000
136 and 137	Columbus, Pa.	1,000		1,000

¹ From pending application by the Bureau of Mines. Not declared surplus to date.² No longer available. Letter of intent signed Dec. 12, 1946.³ Land and buildings only.⁴ This machinery was removed from plant, any that is recovered will be sold to Alcoa, but what can be found is not known.⁵ Cost of aluminum rivet facilities included in total value of aircraft plants.

Table 8.—Aluminum Plant Leases

Plant or	Location	Product	Effective date	Period (years)	Earliest cancellation date	Termination date
22-K	Jones Mills, Ark.	Ingot	5-22-42	5	11-22-47	5-22-51
22-X	Harrison Creek, Ark.	Aluminum	6-15-42	5	12-15-47	6-15-51
22-S	Spokane, Wash.	Ingot	7-17-42	5	1-17-48	7-17-51
22-O	Trenton, Oreg.	do	To be determined	5	314 years	In 1952
22-AO	Dolan Range, La.	Aluminum	11-1-42 (suspended)	5	30 months	In 1951
62	McCook, Ill.	Ingot	6-1-42	5	6-1-47	6-1-51
22	Adrian, Mich.	Extrusion	2-1-42	10	2-1-52	6-1-52
22	Los Angeles, Calif.	do	4-25-42	5	4-25-47	4-25-51
22	Grand Rapids, Mich.	do	6-1-42	5	6-1-47	6-1-51
77-F2	Phoenix, Ariz.	do	When re-billed	5	Any time after 18 months notice	In 1951
22	Trentwood, Wash.	Sheet	7-1-42	5	7-1-47	7-1-51

1 Leases cancelled. All other plants operating under letters of intent.

Table 9.—Distribution of Bidders for Surplus Aluminum Plants as of Nov. 30, 1946

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Plant No.	Type of plant	Wartime operator	Location	Number of bidders	Successful bidder	Other bidders ²
220-x	Alumina	Alcoa	Hurricane Creek, Ark.	2	Reynolds Metals Co.	Alcoa.
220-o	do	do	Baton Rouge, La.	2	Permanente Metals, Inc. (Kaiser)	Alarco Aluminum Co.
1370	Sinter	do	East St. Louis, Ill.	3	Earle P. Halliburton, Inc., Los Angeles.	C. W. Murchison, Dallas, Tex.; Lone Star Cement Corp., New York, N. Y.
1371	do	do	Mobile, Ala.	4	Ideal Cement Co., Denver	Lone Star Cement Corp., New York, N. Y.; Consolidated Products Co., New York; Earle P. Halliburton, Inc., Los Angeles, Calif.
226-k	Reduction	do	Jones Mill, Ark.	1	Reynolds Metals Co.	Kaiser Cargo, Inc.; Alarco Aluminum Co.
226-o	do	do	Troutdale, Oreg.	3	do	Reynolds Metals Co.
226-s	do	do	Spokane, Wash.	2	Permanente Metals, Inc. (Kaiser)	Do.
1061	Sheet	do	do	2	Kaiser Cargo, Inc.	Alcoa; McNulty-Haney, Midland, Mich.
652	do	do	Chicago, Ill.	3	Reynolds Metals Co.	Reynolds Metals Co.; Eastern Metals Prods. Co.; Pond-Orielle Mines & Metals Co.
65	do	Reynolds	Listerhill, Ala.	1	Reynolds Alloys Co.	Reliance Steel Products Co., McKeesport, Pa.
245	Reduction	Olin Ind., Inc.	Tacoma, Wash.	4	Permanente Metals Corp.	Bohn Al. & Brass Co.
773-1	Extrusions	Alcoa	Cressona, Pa.	2	Alcoa	American Ferrous Casting Co.; Michael Albano, Springfield Illinois Foundry Co.; Westinghouse Elec. Co.
773-2	do	do	Phoenix, Ariz.	1	Reynolds Metals Co.	
324	do	Bohn Al. Co.	Adrian, Mich.	1	Bohn Al. Co.	
326	do	do	Los Angeles, Calif.	1	Harvey Machine Co.	
2380	do	Extruded Metals Co.	Grand Rapids, Mich.	2	Reynolds Metals Co.	
1208	Sand foundry	General Motors-Deico	Bedford, Ind.	1	General Motors Corp.	
1214	Cylinder head	Alcoa	Kansas City, Mo.	1	Vendo Co.	
504	do	General Motors-Buick	Flint, Mich.	1	General Motors Corp.	
1400 A	Permanent mold foundry	Reynolds Metals Co.	Springfield, Mass.	3	Indian Motorcycle Co.	
2087	do	Kinney Al. Co.	Vernon, Calif.	1	Kinney Al. Co.	
446 (portion)	Forgings	General Motors-Chevrolet	Saginaw, Mich.	1	General Motors-Chevrolet	
2023	do	Reynolds	Louisville, Ky.	1	Reynolds Metals Co.	
178	Finished products	Huck Mfg. Co.	Detroit, Mich.	1	Huck Mfg. Co.	
2131	Powder	McAler Mfg. Co.	Rochester, Mich.	2	Arco Products Co., Detroit	J & E Stevens Sales Co., New York.
1377	Forgings	Alcoa	Monroe, Mich.	1	Kelsey Hayes Wheel Co.	

¹ This list includes only bids forwarded to the Washington office. It does not include bids submitted to the field office which were found to be unacceptable and were turned down in the field.

² Includes only bids for entire plant or substantial portion of the plant.
³ Option right exercised.

APPENDIX 1

Letter From Attorney General Concerning Cressona Sale

August 23, 1946.

Mr. JOHN G. ALEXANDER,
Acting General Counsel,
War Assets Administration,
Washington, D. C.

DEAR MR. ALEXANDER: We have Mr. Bridges' letter dated August 15, 1946, requesting our advice pursuant to Section 20 of the Surplus Property Act of 1944 as to whether a proposed sale of Plancor 773-1 (F4) at Cressona, Pa., by the War Assets Administration to the Aluminum Company of America would violate the antitrust laws. You have made available to us a memorandum to your Real Property Disposal Board which describes the proposal. From your letter and the memorandum it appears that the land, buildings and building installations in this Plancor are to be sold to Alcoa for \$6.5 million and that machinery and production equipment which is in the plant, or was in the plant and is now in the possession of the Government, is to be sold to Alcoa at approximately 60 percent of installed cost to the Government. The plant is thus to be re-equipped and used for the production of aluminum extrusions. The memorandum states that the plant was widely advertized and that no other offer for use of the building or building installations in the aluminum industry was received by War Assets Administration.

The general issues arising under the antitrust laws involved in the disposition of government owned aluminum fabrication facilities, to Alcoa and our views on such issues, are set forth in a letter, dated February 7, 1946, from the Attorney General to the Chairman of the War Assets Administration. That letter dealt primarily with rolling mill facilities which are of greater importance as an outlet for aluminum ingot than extrusions. Since February 7, 1946, the leasing of additional government aluminum plants and rolling mills, although not as yet assuring a competitive aluminum industry, have created the possibility for a competitive aluminum industry resulting from the disposition of war time government plants. Such conclusions, therefore, continue to be applicable to the general problem of disposing of Government-owned fabrication facilities, but do not foreclose consideration of this particular proposal in terms of current market conditions.

A considerable part of the present market for aluminum extrusions is the result of shortages of steel and wood and the current critical

need for housing materials. With the uncertainties which exist as to the extent to which the operators of government-built aluminum plants will be able to establish themselves as competitive factors in the industry and under the abnormal present factors which are affecting the market for aluminum extrusions, it is impossible for us to predict, with any real certainty, the extent to which the proposed disposition would add to Alcoa's future control over the production and sale of ingot, the availability of supplies to nonintegrated producers of extrusions. However, while these uncertainties and abnormal market conditions exist, we could not say that the acquisition by Alcoa of aluminum extrusion facilities would, standing alone, violate the antitrust laws. However, termination of the abnormal factors now affecting the market could result in Alcoa's ownership of these facilities being an element for its maintaining a monopoly over ingot or maintaining the position it has secured through violation of the antitrust laws. It must be presumed that Alcoa is conscious of this situation and these possibilities. Therefore, Alcoa must understand that if it acquired any of the property here involved, such acquisition must be subject to the later court review contemplated by the judgment, entered on April 23, 1946, in the case of *United States v. Aluminum Company of America*.

The production equipment and machinery involved in the proposal presents a further issue. If the acquisition by Alcoa of items of production equipment or machinery from War Assets Administration should have the effect of depriving others of an opportunity to acquire similar equipment or machinery needed to enable them to compete in the current market for extrusions, such acquisition, in our view, would be inconsistent with the antitrust laws. Therefore, if necessary, the quantities and types of production equipment to be sold to Alcoa should be limited by the needs of others for such machinery and equipment.

Sincerely yours,

WENDELL BERGE,
Assistant Attorney General.

Appendix 2.—Surplus Aluminum Plant Disposals as of Nov. 30, 1946

(Thousands of dollars)

Plant No.	Wartime operator and location	Original cost	Disposals					Undisposed of balance	Purchaser or lessee	Proposed utilization
			Total	Leases	Sales		Equipment, sales and transfers			
					Original cost	Sales price				
Alumina										
From bauxite:										
228-X	Alcoa, Hurricane Creek, Ark.	28,349	28,349	28,707			843		Reynolds Metals Co.	Alumina
228-AO	Alcoa, Baton Rouge, La.	26,363	19,162	18,085			1,067	17,290	Permanent Metals Corp. (Kaiser).	Do.
Sinter plants:										
1570	Alcoa, East St. Louis, Ill.	12,491	12,491		12,491	2,100			Earl F. Halliburton, Inc.	Cement.
1571	Alcoa, Mobile, Ala.	14,068	9,808		9,874	1,000	324	4,086	Ideal Cement Co.	Do.
Experimental alumina:										
291	Kalmite, Salt Lake City, Utah	4,945	38	38				4,907	Bureau of Reclamation	Soil testing.
Aluminum Reduction										
228-A1	Alcoa, Maspeth, N. Y.	22,363	2,611		10	20	2,501	20,252	George Jacobs, N. Y.	Fountain pen.
228-A2	Alcoa, Burlington, N. J.	16,716	990		74	20	186	16,436	Nordich Col-lustris Corp.	Aluminum ingot.
228-K	Alcoa, Jones Mills, Ark.	28,363	28,363	28,881			472		Reynolds Metals Co.	Do.
228-S	Alcoa, Spokane, Wash.	28,323	28,323	28,884			248		Permanent Metals Corp. (Kaiser).	Do.
228-O	Alcoa, Troutdale, Oreg.	19,398	19,398	19,080			306		Reynolds Metals Co.	Electric power.
228-A4	Alcoa, Riverbank, Calif.	11,626	601		153	138	443	11,226	Modesto Irrigation district, Modesto, Calif.	Do.
243	Olin Industries Inc., Tacoma, Wash.	6,290	6,290		6,290	3,000			Permanent Metals Co.	Aluminum ingot.
Sheet, Strip and Plate										
652	Alcoa, McCook, Chicago, Ill.	43,546	43,546	42,882	20	20	664		Reynolds Metals Co.	Aluminum sheet.
									Public Service Co. of Illinois.	
1061	Alcoa, Trentwood, Spokane, Wash.	48,376	48,376	48,376					Permanent Metals Corp. (Kaiser).	Aluminum sheet.
66	Reynolds Alloys Co., Listerhill, Ala.	20,767	20,767		20,767	7,000			Reynolds Metals Co.	Do.

See footnotes at end of table.

Appendix 2.—Surplus Aluminum Plant Disposals as of Nov. 30, 1946—Continued

(Thousands of dollars)

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Plant No.	Wartime operator and location	Original cost	Disposals					Undisposed of balance	Purchaser or lessee	Proposed utilization
			Total	Leases	Sales		Equipment, sales and transfers			
					Original cost	Sales price				
Extrusions										
2280	Extruded Metals, Inc., Grand Rapids, Mich.	6,730	6,730	6,611			119		Reynolds Metals Co.	Aluminum extrusions
234	Bohn Aluminum & Brass Co., Adrian, Mich.	16,633	13,936	13,794			142	2,668	Bohn Al. & Brass Co.	Do.
236	Bohn Aluminum & Brass Co., Los Angeles, Calif.	8,267	8,267	8,205			62		Harvey Machine Co.	Do.
773-1 (F-4)	Alcoa, Crosson, Pa.	20,026	11,479		11,479	8,800		14,547	Alcoa	Do.
773 (F-3)	Alcoa, Phoenix, Ariz.	35,263	35,263	34,819			444		Reynolds Metals Co.	Do.
1778	Revere Copper & Brass Co., Halthorpe, Md.	7,612						7,608	Baltimore County, Md.	Police station.
Castings										
1206	General Motors Corp., Delco Div., Bedford, Ind.	2,766	2,766		2,766	1,100			General Motors Corp.	Steel drop forge.
2067	Kinney Aluminum Co., Vernon, Calif.	168	168		168	153			Kinney Aluminum Co.	Aluminum castings.
1408a	Reynolds Metals Co., Springfield, Mass.	2,112	1,666		1,666	413		1,446	Indian Motorcycle Co.	Motorcycles.
504	General Motors Corp., Buick Div., Flint, Mich.	9,017	4,348		4,353	2,126	63	4,669	General Motors Corp.	Machine shop.
1214	Alcoa, Kansas City, Mo.	6,270	2,626	2,540			86	3,644	Vendo Co.	Vending machines.
792	Chrysler Corp., Dodge Div., Chicago, Ill.	7,478	7,478	7,478					Tucker Corp.	Automobiles.
667	National Aluminum Cylinder-head Co., Cleveland, Ohio.	4,368	186	118	28	28		4,212	Gilson Eng. Co. Shell Tool & Eng. Co. National Bronze & Al. Fdry. Co.	Garage. Tools, dies, gages. Storage space.
Forgings										
444	General Motors Corp., Chevrolet Div., Eganaw, Mich.	8,703	493	482				8,221	General Motors Corp.	Automobile parts.
1166-2	Alcoa, Canonsburg, Pa.	20,648	2,429	2,564			838	22,236	Penna. Trans. Co.	Space leased under multiple tenancy project.
1277	Alcoa, Monroe, Mich.	12,875	6,418		6,208	2,450	213	7,460	Kelsey-Hayes Whl. Co.	Aluminum kitchenware.
2023	Reynolds Metals Co., Louisville, Ky.	2,137	2,137		2,137	1,470			Reynolds Metals Co.	Aluminum and stainless steel stamping manufacturing.
1763	Canton Drop Forging & Mfg. Co., Massillon, Ohio.	794	794		794	375			Massillon Alun. Co.	
Rivets										
206	Lockheed Aircraft Co., Burbank, Calif.	n. a.	n. a.	n. a.					Lockheed Aircraft Co.	Aircraft.
178	Huck Mfg. Co., Detroit, Mich.	780	551		551	184		229	Huck Mfg. Co.	Aluminum rivets.
Powder										
2161	McAlister Mfg. Co., Rochester, Mich.	353	143		143	30		210	Artec Products Co.	Household articles.
1978	National Smelting Co., Cleveland, Ohio.	1,026	447	447				579	National Smelting Co.	
NOrd 1230	Metals Disintegrating Co., Webster Grove, Mo.	379	379				379		Veterans Admin.	

* Baton Rouge sinter plant.

* Represents facilities scrambled with Alcoa's plant at Mobile.

* Represents machinery removed from plant; recoverable amount will be sold to Alcoa.

* Tentatively leased.

* Land and buildings only.

* Lease covers only facilities for production of reclaimed magnesium.

* Withdrawn from surplus by the Navy Department for transfer to the Veterans Administration.

Appendix 3.—Disposal of Scrambled Equipment in Privately Owned Plants as of Nov. 15, 1946

(Thousands of dollars)

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Placer No.	Name and location	Government investment		Equipment disposals				Equipment declared surplus to W.A.A.	Equipment remaining at plant site	
		Total	Machinery and equipment	Total	Sold to plant owner	Sold to other privately owned plants	Leased to Government agencies or privately owned plants			Sold by RFC as scrap and salvage
Total scrambled equipment in privately owned plants		14,322	14,300	3,013	1,981	741	171	140	4,445	7,100
Aluminum reduction:										
1002	Alcoa, Badin, N. C.	166	166	135		130				35
Forgings:										
1100	Alcoa, Vernon, Calif.	1,711	1,711							1,711
1100-77	Alcoa, Cleveland, Ohio ¹	619	619	30		30				589
227	Revere Copper & Brass Co., Rome, N. Y.	287	287	186						101
3120	Titan Metal Co., Bellefonte, Pa.	14	14	14						0
1728	Tube Turns, Inc., Louisville, Ky.	1,121	1,008	180		180				941
117	Willys-Overland Motors Inc., Toledo, Ohio ²	2,465	2,401							64
Tubing:										
1502	Revere Copper & Brass Co., Baltimore, Md.	1,478	1,478	717	717					761
Seed castings:										
2182	Anne Aluminum Alloys Co., Dayton, Ohio ³	400	400	379	379					21
2008	Aluminum Alloys Corp., Detroit, Mich. ⁴	181	181	135	103	19			10	31
	Aluminum Industries, Inc., Cincinnati, Ohio	496	496	12		12		5	25	33
	Bahn Aluminum & Brass Co., Detroit, Mich. ⁵	101	101	0	1					100
2002	Detroit Suburban Foundry Co., Birmingham, Mich. ⁶	5	5	0				5	34	35
2004	Elmhurst Foundry Co., Elmhurst, N. Y.	200	200	38				5		162
Refractory:										
1100	General Malleable Corp., Waukegan, Wis.	276	276					0	103	379
1000	Maytag Co., Newton, Iowa ⁷	117	117	69						48
1100	Metal Parts Corp., Racine, Wis. ⁸	85	85	63	16	33				22
1467	National Foundry & Machine Co., Brooklyn, N. Y. ⁹	100	100	18	50			12	30	82
908	Oberdorfer Foundries, Syracuse, N. Y.	178	178	100				18	34	68
	Packard Motor Car Co., Detroit, Mich. ¹⁰				21	5		83	88	3979

Permanent mold castings:									
2153	Monarch Aluminum Mfg. Co., Cleveland, Ohio	215	215	180	187			3	35
2154	Perrinold Co., Medina, Ohio	40	40	40	40				0
Cast cylinder heads:									
1416	Caterpillar Tractor Co., Peoria, Ill. ¹¹	430	430	430	18	240	171		181
719	Nash-Kelvinator Corp., Kenosha, Wis. ¹²	289	289	202	135	67			72
1216	Serval Corp., Evansville, Ind.	110	110	63	47	15			32
11	Wright Aeronautical Corp., Paterson, N. J.	50	50	12	12				38
Extrusions:									
2403	Alcoa, New Kensington, Pa.	563	563						563
Powder:									
2502	Merrill Products Co., Emeryville, Calif.	74	68	33	33			13	1

¹ Predominantly a forging plant, but some tube capacity. No equipment sold except a small amount of scrap. Some equipment, declared surplus to W.A.A., is now being leased by Alcoa. Remainder of equipment awaiting declaration.

² Plant clearance and removal program in progress. Alcoa negotiating for certain equipment tentatively not being prepared for removal. One die sinking machine (value \$29,775) sold to Cleveland Pneumatic Tool Co., Cleveland.

³ No equipment at plant site except scrap, and salvage.

⁴ Under interim lease to plant owner.

⁵ Lease negotiating to purchase approximately 1/4 of equipment; balance probably to be scrapped. No declarations pending scrap determination.

⁶ Probably incomplete.

⁷ Sale and storage pending.

⁸ Placer cancelled in 1944—Equipment sold during period February-June 1944.

⁹ Placer cancelled in 1944—Equipment sold.

¹⁰ Costs do not balance across because some costs are on an f. o. b. basis, and some are on a delivered basis.

¹¹ Entire equipment at site pending negotiation for purchase by Alcoa for transfer to Cressona, Pa. plant.

320 In The United States Circuit Court of Appeals for the
Second Circuit

[Title Omitted]

*Motion of Aluminum Company of America for leave to intervene
as a defendant and for other relief*

(Filed Oct. 14, 1947)

To the Honorable Learned Hand, Thomas W. Swan and Augustus
N. Hand, United States Circuit Judges:

Referring to the petition of the plaintiff (United States of
America) filed in this Court on September 11, 1947, praying for
a writ of mandamus directed to Judge Caffey (which petition is
hereinafter sometimes referred to as the mandamus petition),
Aluminum Company of America (hereinafter called "Alcoa")

respectfully moves this Court to enter an order, (a) direct-
321 ing that Alcoa be made a party defendant in said proceeding,

(b) permitting Alcoa to file such pleadings and other papers
as it may be advised, including a motion to dismiss plaintiff's peti-
tion and to be heard in oral argument and by brief and (c) deny-
ing plaintiff's prayer to stay the trial fixed to commence on Octo-
ber 15, 1947, before Judge Caffey, and, on the contrary, directing
that the pendency of this proceeding in this Court shall not delay
the beginning and conduct of said trial, subject, however, to any
further order which may be made by this Court in regard thereto.
This motion is made for the following reasons, which reasons, for
convenience and to avoid confusion in reference, will be set forth
in paragraphs called "subdivisions" hereof.

Subdivision 1. On April 23, 1946, the District Court entered a
judgment, a copy of which is attached to the mandamus petition
as Appendix C. Paragraph 7 of the judgment adjudicated that
Alcoa and certain other defendants monopolized the United States
aluminum ingot market from February 2, 1909, to the close of the
trial on August 14, 1940. Paragraph 8 of the judgment adjudi-
cated that Alcoa and certain other defendants engaged in a price
squeeze with respect to certain gauges of aluminum sheet and
aluminum alloy sheet from 1925 to 1932 and paragraph 9 of the
judgment enjoined Alcoa and such other defendants from indulg-
ing in a price squeeze in such aluminum sheet or aluminum alloy
sheet. Paragraph 10 of the judgment dismissed, on the merits, the
petition of the United States filed on April 23, 1937, as amended,
with respect to all claims except those sustained in paragraphs 7
and 8 of the judgment as above set forth. Consequently, every
issue in said case is, by the judgment of April 23, 1946, res

322 *adjudicata* except the single issue whether or not the aluminum ingot monopoly has been terminated.

By paragraph 12 of the judgment the District Court retained jurisdiction of the case in order that the Attorney General might institute certain further proceedings as therein set forth and "for the purpose of enabling Aluminum Company of America to apply to this Court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States."

By its mandamus petition plaintiff prays for a writ of mandamus directing Judge Caffey to vacate the above-quoted portion of paragraph 12 of the judgment (enabling Alcoa to apply to the court) and prays the court to dismiss Alcoa's petition (hereinafter mentioned) filed on March 31, 1947, in the District Court and prays for a stay of the trial proceedings before the District Judge and for further relief.

Subdivision 2. The issuance of a mandamus such as that mentioned in subdivision 1 hereof or the issuance of an order to dismiss Alcoa's petition or the issuance of an order staying the trial proceeding would seriously prejudice vitally important rights of Alcoa.

Subdivision 3. If a mandamus were issued directing Judge Caffey to vacate the portion of paragraph 12 of the judgment quoted in subdivision 1 hereof, Alcoa would be bound by a judgment adjudicating that it had monopolized the aluminum ingot market in the United States to August 14, 1940, and, in consequent peril of dissolution, and unable—no matter what the competitive

situation might have become—ever to apply to the
323 court for a determination that the ingot monopoly had been terminated. The whole question would be left to the uncontrolled discretion of the Attorney General who could defer for 5, 10 or 20 years, or even indefinitely, the presentation of that question to the court. The present attitude of the Department of Justice with respect to the disposition of this 10-year old case convincingly shows what course the Department would follow if the Attorney General were ever given such arbitrary control over Alcoa as plaintiff now seeks.

In these critical and dangerous years it is essential not only for the protection of Alcoa but also in the public interest that the directors and officers of Alcoa should plan for the future conduct and development of the company's business. With an adjudication of this kind and the consequent peril of a dissolution hanging over the company, it is impossible to plan for the future or even properly to conduct the business of the present.

Subdivision 4. It was eminently proper for Judge Caffey to insert in said judgment, both in the public interest and for the pro-

tection of Alcoa, the provision in paragraph 12 quoted in subdivision 1 hereof. The opinion and mandate of this Court neither state nor intimate anything to the contrary. This Court was careful to remand the case to the District Court on terms which in no wise limited the discretion either of the surplus property disposal agency or of the District Court. Any procedure promulgated by the District Court which enables it to determine whether or not Alcoa is still monopolizing the aluminum ingot market and, if so, what should be done about it, is clearly within the framework of the mandate of this Court.

324 That plaintiff and Alcoa should be given equality of opportunity to apply to the court on the question of whether the ingot monopoly had been terminated is clearly shown by this court's opinion. In its opinion, this Court, in considering whether certain alleged unlawful practices of Alcoa might be moot, said (148 F. (2d) at p. 432):

"Possibly that would be true, except that conditions have so changed since the case was closed, that, as will appear, it by no means follows, because 'Alcoa' had a monopoly in 1940, that it will have one when final judgment is entered after the war."

This Court further said (148 F. (2d) at pp. 445 and 446):

"Nearly five years have passed since the evidence was closed; during that time the aluminum industry, like most other industries, has been revolutionized by the nation's efforts in a great crisis."

"It is as idle for the plaintiff to assume that dissolution will be proper, as it is for 'Alcoa' to assume that it will not be; and it would be particularly fatuous to prepare a plan now, even if we could be sure that eventually some form of dissolution will be proper. Dissolution is not a penalty but a remedy; if the industry will not need it for its protection, it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency."

Subdivision 5. The District Court would not have been justified in adjudicating that Alcoa had monopolized the aluminum ingot market in the United States prior to August 14, 1940, but leaving, for future determination, the question whether the ingot monopoly had been terminated if, at the same time, the Court had declined to insert in the judgment provisions authorizing

Alcoa to apply to the Court for a determination whether
325 such monopoly had been terminated. Such a position by the Court would, in substance, have denied to Alcoa its day in court.

Subdivision 6. It was never the intention of this Court to tie the hands of Alcoa and give to the Attorney General the arbitrary power, by mere inaction, to prevent the application of the test prescribed by this Court for the solution of the question whether the ingot monopoly has been terminated.

The danger to the proper solution of that question comes not from the terms of the judgment of April 23, 1946, or from the procedure that is being followed by Alcoa. The real danger comes from the plaintiff's high-handed and arbitrary attempt to seize the veto power.

Subdivision 7. No appeal has ever been taken from the judgment of April 23, 1946, and the time for appeal has long since expired. The judgment is a final judgment with respect to everything included therein, including the provision allowing Alcoa to apply to the Court for a determination of the question whether the ingot monopoly had been terminated. In the absence of an appeal, the plaintiff has no right to take the benefits of the judgment to itself and at the same time to endeavor to deprive Alcoa of the provisions for the protection of the latter. Particularly is this so when there is an attempt to substitute a mandamus for an appeal more than sixteen months after the entry of the judgment.

Subdivision 8. On June 4, 1945, the plaintiff moved for the settlement of the judgment and on December 7, 1945, the 326 Department of Justice, on behalf of the plaintiff, wrote to Judge Caffey asking for immediate entry of the judgment, leaving for future determination the question whether the ingot monopoly had been terminated. On June 26 and 27, 1945, and again on March 19, 1946, counsel for all the parties appeared before Judge Caffey and argued the question of the form of the judgment. In initiating proceedings for a judgment, the Department of Justice had submitted to Judge Caffey on June 4, 1945, a form of judgment in which only the Attorney General was given the right to apply to the court under the reserved jurisdiction with respect to the ingot monopoly.

On June 21, 1945, counsel for Alcoa filed with Judge Caffey a suggested form of judgment in which it was provided in substance, that jurisdiction be retained for the purpose of enabling any party to the judgment to apply to the court for a further judgment on the question whether the aluminum ingot monopoly had been terminated. Counsel for the United States, at the oral argument before Judge Caffey on June 26, 1945, specifically called to the court's attention this position of Alcoa's counsel and further specifically mentioned Alcoa's position on this point in their brief filed with Judge Caffey subsequent to the oral argument. In these references counsel for the United States in no manner criticized or objected to the said position of Alcoa's counsel but

called it to the court's attention for the purpose of criticizing other portions of the form of judgment submitted by the latter.

On March 14, 1946, counsel for Alcoa filed with Judge Caffey a brief (of which the Government received a copy) making suggestions as to the form of the judgment in which it was suggested that, in the portion of the judgment retaining jurisdiction, for the purpose of enabling the Attorney General to institute certain proceedings, it should be stated that jurisdiction was also retained "for the purpose of enabling Aluminum Company of America to apply to the court for a determination of the question whether the company still has a monopoly of the aluminum ingot business and, upon determining this question, to enter the appropriate judgment". At the oral argument before the Court, five days later, representatives of the Department of Justice took no exception to this request. Indeed at neither of these oral arguments nor in any briefs filed in connection therewith nor at any other time did any representative of the plaintiff or of the Department of Justice object in any way to the inclusion in the judgment of a provision giving Alcoa the above-mentioned right of application to the court. No question was ever raised by plaintiff or any representative of the plaintiff or of the Department of Justice concerning the propriety of the language quoted in subdivision 1 hereof (covering Alcoa's said right of application to the court) until the filing of plaintiff's mandamus petition in this Court on September 11, 1947.

Having permitted the judgment to be entered after oral argument and filing of briefs without the slightest suggestion that the opinion or mandate of this Court was in any way opposed to the insertion of the said provision in the judgment, the Department of Justice should not be permitted at this late date to assert that either the opinion or mandate is opposed to the judgment in this particular.

Subdivision 9. Plaintiff's petition for mandamus is incomplete and inaccurate, does not correctly portray the competitive situation and seeks to escape the fact that the competitive aluminum disposal plan of the War Assets Administration (successor to the Surplus Property Board) has been substantially completed. In subdivision (c) of paragraph 8 of the petition, plaintiff quotes excerpts from Exhibit 2 (attached to Alcoa's petition in the District Court at p. 34 hereof), although an examination of Exhibit 2 as a whole clearly shows that the disposal plant has been substantially completed. Furthermore, plaintiff significantly omits any reference to other exhibits attached to Alcoa's said petition. For example, Exhibit 3 is a copy of a news release of the War Assets Administration issued April 9, 1946, and Exhibit 11 is a copy of a news release of the War Assets Admin-

istration issued May 6, 1947. The fact that each of these exhibits is a correct copy of the news release in question is specifically admitted in the answer filed by plaintiff in the District Court. Exhibit 3 (p. 117 of Alcoa's petition in the District Court) shows that General E. B. Gregory, War Assets Administrator, on April 9, 1946, made the following statement:

"General E. B. Gregory, War Assets Administrator, today announced the lease of the government-owned Baton Rouge Alumina Plant to Kaiser Cargo, Inc., and The Troutdale Aluminum Reduction Plant to Reynolds Metals Co. subject to the approval of the Attorney General. This action substantially completes disposal through lease of the government-owned aluminum facilities. Both government-owned alumina plants, the three reduction plants capable of economic operation, all of the sheet mills (three in number) and two of the four extrusion plants have now been committed."

In Exhibit 11 (attached to Alcoa's said petition by amendment) these statements were made by the War Assets Administration on May 6, 1947:

329 "All aluminum reduction plants capable of economical peacetime operation have been disposed of. Five reduction plants remain, but these are located in areas where economical electric power is not now available. Disposal of these plants will depend heavily upon the ability to procure sufficient power at desirable rates.

"Aluminum fabricating plants not yet disposed of are those which were designed to produce extrusions, castings, and forgings solely for war purposes and which have little or no peacetime adaptations.

"WAA pointed out that one of the principal objectives of the aluminum disposal program is to introduce competition in the aluminum industry by permitting new entrants in the field to become established on a profitable basis. This objective has been achieved in the case of leased plants by fixing a schedule of constantly increasing rentals so that, after the fourth year of operation, rentals will run on a straight commercial basis. The return to the government under this leasing arrangement has been highly satisfactory."

The excerpts from Exhibit 2 quoted in plaintiff's mandamus petition and the excerpts from Exhibits 3 and 11 which we have just quoted have no applicability to the question before this appellate court because they bear upon the merits of the issues raised between the plaintiff and Alcoa by Alcoa's petition filed March 31, 1947, in the District Court and by plaintiff's answer thereto filed on June 13, 1947. Consideration of the merits of these issues is in the first instance for the District Court and could

come before this court only on appeal. We deprecate the necessity of referring to the exhibits attached to Alcoa's said petition but we submit that the references to Exhibit 2 made by plaintiff's counsel in its petition justify and indeed make necessary the references we have made to the exhibits in order to prevent
 330 this court from receiving an erroneous impression as to the merits of this controversy. A glance at Alcoa's petition of March 31, 1947, and plaintiff's answer thereto, will show that many issues are drawn as to the nature and extent of the competition which has been created by the disposal plan of the Surplus Property Board and its successors such, for example, as the relative production and relative capacity of Alcoa's ingot plants and those of the Reynolds and Kaiser interests, the fact as alleged by Alcoa that the Reynolds and Kaiser interests are integrated companies, the nature of the aluminum disposal program of the Surplus Property Board and its successors and the fact as to whether or not such disposal program has been substantially completed. All these matters are for the District Court in the first instance and have no place in these mandamus proceedings before this court unless by the first prayer of plaintiff's petition that Alcoa's petition of March 31, 1947, be dismissed plaintiff means to imply that this court should dismiss that petition on the merits. Surely that cannot be the function of an appellate court until the matter has first been passed upon by the District Court.

Subdivision 10. For the reasons set forth in the last two sentences of subdivision 3 hereof any delay in the trial of the issues raised by Alcoa's petition of March 31, 1947, and plaintiff's answer thereto will injure Alcoa and the public by preventing plans for the future business and operations of Alcoa.

If plaintiff within thirty days after the filing of Alcoa's petition of March 31, 1947, had filed its answer thereto, the issues thereby raised could have been readily heard and disposed of in the spring or early summer of 1947, and prior to the summer vacation period.

331 However, instead of filing an answer, on May 2, 1947, plaintiff filed a so-called motion to dismiss Alcoa's petition for failure to state a claim on which relief would be granted. The ground of the motion was that Alcoa's petition was premature although this ground was stated in several varying forms. While the document thus filed by plaintiff was termed a motion, it was, in substance, a speaking demurrer. The said motion is attached to the petition filed by plaintiff in this court as appendix E thereof. The effect of filing this motion or demurrer was to delay the trial of the issues until fall.

This procedure by the plaintiff made it necessary to argue the question before Judge Caffey and the question was argued before

him by counsel for the United States and for Alcoa on May 5, 1947. On May 28, 1947, Judge Caffey handed down an opinion directing the denial of the Government's motion, a copy of which opinion is attached to the mandamus petition as appendix F thereof. In that opinion Judge Caffey said, among other things:

"Whether the petition has been filed prematurely, as urged by the plaintiff, cannot be satisfactorily determined from a mere consideration of the petition itself and the arguments advanced pro and con. This can be decided only upon the evidence adduced at the hearing as to presently existing conditions."

and

"The petition is not an attempt by Alcoa to relitigate the question of its monopoly on August 14, 1940, the date when the taking of testimony closed. That question was decided against it by the Circuit Court of Appeals and it is now *res adjudicata*. But the court recognized that conditions in the industry had so changed that it would not necessarily follow that Alcoa would continue to have a monopoly (148 F. 2d 416, 432.)

332 "Furthermore, whether or not Alcoa should now be dissolved, a question specifically left open by the Circuit Court of Appeals, cannot be decided until it is determined whether or not it still has a monopoly of the ingot market."

In Judge Caffey's opinion, above mentioned, the Court suggested that counsel confer with the Court as soon as possible after service of the answer of the United States in order to fix an early date for a hearing prior to the summer vacation period. The answer was filed by the United States on June 13, 1947, by which time it was obvious that it would not be possible to obtain a hearing on the issue before fall.

Accordingly, on June 17, 1947, the following-mentioned counsel for the United States, George B. Haddock, Special Assistant to the Attorney General, and William Watson Smith and Leon E. Hickman, of Pittsburgh, and L. Homer Surbeck, of New York, counsel for Alcoa, appeared before Judge Caffey in his chambers for the purpose of having a date for the hearing fixed. Judge Caffey suggested that counsel should endeavor to agree upon the date, and counsel for the Government and Alcoa thereupon discussed the question in the presence of Judge Caffey and agreed upon October 15 as the date for trying the issue. Accordingly, Judge Caffey there and then directed that the hearing be fixed for October 15, 1947.

Pendency of this mandamus proceeding in this court may further delay the trial of the issues set for hearing before Judge Caffey on October 15, 1947.

We respectfully submit that when plaintiff has failed to raise any question concerning the propriety of including in the judgment of April 23, 1946, the provisions in paragraph 12 thereof (permitting Alcoa to apply to the court) until more than sixteen months after the entry of said judgment and when plaintiff within about a month before the trial set for October 15, 1947, files this mandamus proceeding in this court at a time when the argument can be heard only a few days in advance (if at all in advance) of October 15, 1947, this action should not be permitted to delay said trial before Judge Caffey.

On September 11, 1947, Alcoa presented to Honorable Edward A. Conger, a United States District Judge for the Southern District of New York, petitions requesting the issuance of subpoenas addressed to 12 individuals and three corporations, all of whom reside outside of the Southern District of New York and more than 100 miles from the place where the trial will be held, requiring the appearance of said witnesses at the said trial on October 15, 1947, six of which subpoenas are subpoenas *duces tecum* requiring the production of many records and documents. Pursuant to said petitions, Judge Conger, on September 11, 1947, entered orders directing the Clerk of the Court to issue the said subpoenas and directing the service of said subpoenas in the respective districts within which the said witnesses, respectively, reside or are found. The said petitions were presented to Judge Conger before Alcoa or its counsel had any notice or knowledge of the filing of the mandamus proceeding in this Court. The first notice or knowledge thereof obtained by any of Alcoa's counsel was obtained at about 4:20 o'clock P. M. on September 11, 1947, when a copy of the petition for the mandamus was served upon New York counsel for Alcoa by a representative of the Department of Justice. The service of these various subpoenas is actually proceeding and any interruption in the service or failure to make service would seriously impair Alcoa's rights because so little time is left until the date of the trial and sufficient time must be allowed to permit the witnesses to produce the various records and documents and to appear at the trial in New York City.

Alcoa respectfully submits that it is the real party in interest in this proceeding and that it is entitled to intervene as a party defendant in the proceeding. It therefore respectfully moves this Court to enter an order (a) directing that Alcoa be made a party defendant in said proceeding, (b) permitting Alcoa to file such pleadings and other papers as it may be advised, including a motion to dismiss plaintiff's petition, and to be heard in oral argument and by brief, and (c) denying plaintiff's prayer to stay the trial fixed to commence in the District Court on October 15, 1947,

and, on the contrary, directing the pendency of this proceeding in this Court shall not delay the beginning and conduct of the said trial, subject, however, to any further order which may be made by this court in regard thereto.

ALUMINUM COMPANY OF AMERICA,
By WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
SMITH, BUCHANAN & INGERSOLL,
1025 Union Trust Building, Pittsburgh, Pa.,
CHARLES E. HUGHES, Jr.,
L. HOMER SURBECK,
HUGHES, HUBBARD & EWING,
1 Wall Street, New York, New York,
Its Solicitors.

335 *Duly sworn to by Leon H. Hickman jurat omitted in printing.*

336 United States Circuit Court of Appeals, Second Circuit
Order granting leave to intervene

Oct. 14, 1947

A motion having been made herein by counsel for appellee for leave to intervene as a defendant in an application by the appellant for a writ of mandamus to Hon. Francis G. Caffey, United States District Judge, Southern District of New York,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted.

ALEXANDER M. BELL,

Clerk.

339 In the United States Circuit Court of Appeals for the
Second Circuit

Answer of Aluminum Company of America

Filed Oct. 14, 1947

To the Honorable Learned Hand, Thomas W. Swan and
Augustus N. Hand, United States Circuit Judges:

Referring to the petition of the plaintiff (United States of America) filed in this Court on September 11, 1947, praying for a writ for mandamus directed to Judge Caffey (which petition is hereinafter referred to as the mandamus petition), Aluminum

Company of America (hereinafter called "Alcoa") makes answer as follows:

340 For clarity, Alcoa will make the main part of its answer at the beginning, before taking up the numbered paragraphs of the mandamus petition.

This answer, for convenience and to avoid confusion in reference, will be set forth in paragraphs called "subdivisions" hereof.

Subdivision 1. On April 23, 1946, the District Court entered a judgment, a copy of which is attached to the mandamus petition as Appendix C. Paragraph 7 of the judgment adjudicated that Alcoa and certain other defendants monopolized the United States aluminum ingot market from February 2, 1909, to the close of the trial on August 14, 1940. Paragraph 8 of the judgment adjudicated that Alcoa and certain other defendants engaged in a price squeeze with respect to certain gauges of aluminum sheet and aluminum alloy sheet from 1925 to 1932 and paragraph 9 of the judgment enjoined Alcoa and such other defendants from indulging in a price squeeze in such aluminum sheet or aluminum alloy sheet. Paragraph 10 of the judgment dismissed, on the merits, the petition of the United States filed on April 23, 1937, as amended, with respect to all claims except those sustained in paragraphs 7 and 8 of the judgment as above set forth. Consequently every issue in said case is, by the judgment of April 23, 1946, res adjudicata except the single question whether or not the aluminum ingot monopoly has been terminated.

By paragraph 12 of the judgment the District Court retained jurisdiction of the case in order that the Attorney General might institute certain further proceedings as therein set forth and

341 "for the purpose of enabling Aluminum Company of America to apply to this Court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States."

By its mandamus petition plaintiff prays for a writ of mandamus directing Judge Caffey to execute the mandate of this Court, to vacate the above-quoted portion of paragraph 12 of the judgment (enabling Alcoa to apply to the court) and prays the court to dismiss Alcoa's petition (hereinafter mentioned) filed on March 31, 1947, in the District Court and prays for a stay of the trial proceedings before the District Judge and for further relief.

Subdivision 2. The issuance of a mandamus such as that mentioned in subdivision 1 hereof or the issuance of an order to dismiss Alcoa's petition or the issuance of an order staying the trial proceeding would seriously prejudice vitally important rights of Alcoa.

Subdivision 3. If a mandamus were issued directing Judge Caffey to vacate the portion of paragraph 12 of the judgment quoted in subdivision 1 hereof, Alcoa, although bound by a judgment adjudicating that it had monopolized the aluminum ingot market in the United States to August 14, 1940, and in consequent peril of dissolution, would be unable—no matter what the competitive situation might have become—ever to apply to the court for a determination that the ingot monopoly had been terminated. The whole question would be left to the uncontrolled discretion of the Attorney General who could defer for 5, 10 or 20 years, or even indefinitely, the presentation of that question to the court. The present attitude of the Department of Justice with respect to the disposition of this 10-year old case convincingly shows
 342 what course the Department would follow if the Attorney General were given such arbitrary control over Alcoa as plaintiff now seeks.

In these critical and dangerous years it is essential not only for the protection of Alcoa but also in the public interest that the directors and officers of Alcoa should plan for the future conduct and development of the company's business. With an adjudication of this kind and the consequent peril of a dissolution hanging over the company, it is impossible to plan for the future or even properly to conduct the business of the present.

Subdivision 4. It was eminently proper for Judge Caffey to insert in said judgment, both in the public interest and for the protection of Alcoa, the provision in paragraph 12 quoted in subdivision 1 hereof. The opinion and mandate of this Court neither state nor intimate anything to the contrary. This Court was careful to remand the case to the District Court on terms which in no wise limited the discretion either of the surplus property disposal agency or of the District Court. Any procedure promulgated by the District Court which enables it to determine whether or not Alcoa is still monopolizing the aluminum ingot market and, if so, what should be done about it, is clearly within the framework of the mandate of this Court.

That plaintiff and Alcoa should be given equality of opportunity to apply to the court on the question of whether the ingot monopoly had been terminated is clearly shown by this Court's opinion. In its opinion, this Court, in considering whether certain alleged unlawful practices of Alcoa might be moot, said (148 F. (2d) at p. 432):

343 "Possibly that would be true, except that conditions have so changed since the case was closed, that, as will appear, it by no means follows, because 'Alcoa' had a monopoly in 1940, that it will have one when final judgment is entered after the war."

This Court further said (148 F. (2d) at pp. 445, 446 and 447):
 "Nearly five years have passed since the evidence was closed; during that time the aluminum industry, like most other industries, has been revolutionized by the nation's efforts in a great crisis."

"It is as idle for the plaintiff to assume the dissolution will be proper, as it is for 'Alcoa' to assume that it would not be; and it would be particularly fatuous to prepare a plan now, even if we could be sure that eventually some form of dissolution will be proper. Dissolution is not a penalty but a remedy; if the industry will not need it for its protection; it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency. The need for such a remedy will be for the district court in the first instance, and there is a peculiar propriety in our saying nothing to control its decision, because the appeal from any judgment which it may enter, will perhaps be justiciable only by the Supreme Court, if there are then six justices qualified to sit."

"Therefore we shall merely reverse the judgment, so far as it held that 'Alcoa' was not 'monopolizing' the ingot market, and remand the case to the district court."

Subdivision 5. The Court in its opinion and mandate clearly laid down the test to be applied on the question of
 344 the remedy, but discretion on the question of the procedure to be followed in applying that test is in the District Court as Alcoa believes and avers.

Alcoa believes and avers that all of the following are questions of procedure within the discretion of the District Court, viz, (a) the Court's action in inserting in paragraph 12 of the judgment of April 23, 1946, the provisions enabling Alcoa, as well as the Attorney General, to petition the District Court to apply the test laid down by this Court on the question of remedy; (b) the action of the District Court (hereinafter mentioned) in entertaining, and denying plaintiff's motion to dismiss, the petition of Alcoa filed March 31, 1947, under paragraph 12 of the judgment (a copy of which petition is attached to the mandamus petition as Appendix D); (c) the action of the District Court (hereinafter mentioned) in fixing for trial on October 15, 1947, the issues raised by Alcoa's petition (Appendix D) and plaintiff's answer thereto filed June 13, 1947 (a copy of which answer is appended to the mandamus petition as Appendix H).

Alcoa avers that plaintiff is seeking to have this Court control, by writ of mandamus, the exercise of the discretion of the District Court in the matters hereinbefore in this subdivision mentioned

and respondent respectfully avers that a writ of mandamus should not be issued to control such exercise of discretion.

Subdivision 6. The District Court would not have been justified in adjudicating that Alcoa had monopolized the aluminum ingot market in the United States prior to August 14, 1940, but leaving, for future determination, the question whether the ingot monopoly had been terminated if, at the same time, the Court had declined to insert in the judgment provisions authorizing Alcoa to apply to the Court for a determination whether such monopoly had been terminated. Such a position by the Court would, in substance, have denied to Alcoa its day in court.

Subdivision 7. Alcoa believes and avers that it was not the intention of this Court to tie the hands of Alcoa and give to the Attorney General the arbitrary power, by mere inaction, to prevent the application of the test prescribed by this Court for the solution of the question whether the ingot monopoly has been terminated.

The danger to the proper solution of that question comes not from the terms of the judgment of April 23, 1946, or from the procedure that is being followed by Alcoa. The real danger comes from the plaintiff's unjustified and arbitrary attempt to seize the veto power.

Subdivision 8. No appeal has ever been taken from the judgment of April 23, 1946, and the time for appeal has long since expired. The judgment is a final judgment with respect to everything included therein, including the provision allowing Alcoa to apply to the court for a determination of the question whether the ingot monopoly had been terminated. Alcoa believes and avers that, if there is any error in the judgment (which Alcoa denies), it could be corrected only by appeal and not by writ of mandamus.

Subdivision 9. On June 4, 1945, the plaintiff moved for the settlement of the judgment and on December 7, 1945, the Department of Justice, on behalf of the plaintiff, wrote to Judge Caffey asking for immediate entry of the judgment, leaving for future determination the question whether the ingot monopoly had been terminated. On June 26 and 27, 1945, and again on March 19, 1946, counsel for all the parties appeared before Judge Caffey and argued the question of the form of the judgment. In initiating proceedings for a judgment, the Department of Justice had submitted to Judge Caffey on June 4, 1945, a form of judgment in which only the Attorney General was given the right to apply to the court under the reserved jurisdiction with respect to the ingot monopoly.

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Having permitted the judgment to be entered after oral argument and filing of briefs without the slightest suggestion that the opinion or mandate of this Court was in any way opposed to the insertion of the said provision in the judgment, the Department of Justice should not be permitted at this late date to assert that either the opinion or mandate is opposed to the judgment in this particular.

Subdivision 10. Plaintiff's petition for mandamus is incomplete and inaccurate, does not correctly portray the competitive situa-

tion and seeks to escape the fact that the competitive aluminum disposal plan of the War Assets Administration (successor to the Surplus Property Board) has been substantially completed.

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"General E. B. Gregory, War Assets Administrator, today announced the lease of the government-owned Baton Rouge Alumina Plant to Kaiser Cargo, Inc., and The Troutdale Aluminum Reduction Plant to Reynolds Metals Co., subject to the approval of the Attorney General. This action substantially completes disposal through lease of the government-owned aluminum facilities. Both government-owned alumina plants, the three reduction plants capable of economic operation, all of the sheet mills (three in number) and two of the four extrusion plants have now been committed."

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The excerpts from Exhibit 2 quoted in plaintiff's mandamus petition and the excerpts from Exhibits 3 and 11 which Alcoa has just quoted have no applicability to the question before this appellate court because they bear upon the merits of the issues raised between the plaintiff and Alcoa by Alcoa's petition filed March 31, 1947, in the District Court and by plaintiff's answer thereto filed on June 13, 1947. Consideration of the merits of these issues is in the first instance for the District Court and could come before this Court only on appeal. Alcoa deprecates the necessity of referring to the exhibits attached to Alcoa's said petition but submits that the references to Exhibit 2 made by

350 plaintiff's counsel in its petition justify and indeed make necessary the references Alcoa has made to the exhibits in order to prevent this Court from receiving an erroneous impression as to the merits of this controversy. A glance at Alcoa's petition of March 31, 1947, and plaintiff's answer thereto, will show that many issues are drawn as to the nature and extent of the competition which has been created by the disposal plan of the Surplus Property Board and its successors such, for example, as the relative production and relative capacity of Alcoa's ingot plants and those of the Reynolds and Kaiser interests, the fact as alleged by Alcoa that the Reynolds and Kaiser interests are integrated companies, the nature of the aluminum disposal program of the Surplus Property Board and its successors and the fact as to whether or not such disposal program has been substantially completed. All these matters are for the District Court in the first instance and have no place in these mandamus proceedings before this Court unless by the first prayer of plaintiff's petition that Alcoa's petition of March 31, 1947, be dismissed plaintiff means to imply that this Court should dismiss that petition on the merits. Alcoa submits that this cannot be the function of an appellate court until the matter has first been passed upon by the District Court.

Subdivision 11. For the reasons set forth in the last two sentences of subdivision 3 hereof any delay in the trial of the issues raised by Alcoa's petition of March 31, 1947, and plaintiff's answer thereto will injure Alcoa and the public by preventing plans for the future business and operations of Alcoa.

If plaintiff within thirty days after the filing of Alcoa's petition of March 31, 1947, had filed its answer thereto, the issues
351 thereby raised could have been readily heard and disposed

of in the spring or early summer of 1947, and prior to the summer vacation period.

However, instead of filing an answer, on May 2, 1947, plaintiff filed a so-called motion to dismiss Alcoa's petition for failure to state a claim on which relief would be granted. The ground of the motion was that Alcoa's petition was premature although this ground was stated in several varying forms. While the document thus filed by plaintiff was termed a motion, it was, in substance, a speaking demurrer. The said motion is attached to the petition filed by plaintiff in this Court as Appendix E thereof. Neither in that motion nor in any oral argument made or brief submitted to Judge Caffey by plaintiff's counsel in regard thereto was there any suggestion whatever that there was any impropriety in the portion of paragraph 12 of the judgment of April 23, 1946, permitting Alcoa to apply to the court. The plaintiff in its said motion and oral argument to Judge Caffey made thereon and brief submitted to him, laid great stress on the assertion that Alcoa's petition of March 31, 1947, had been filed prematurely. The effect of filing this motion or demurrer was to delay the trial of the issues until fall.

This procedure by the plaintiff made it necessary to argue the question before Judge Caffey and the question was argued before him by counsel for the United States and for Alcoa on May 5, 1947. On May 28, 1947, Judge Caffey handed down an opinion directing the denial of the Government's motion, a copy of which opinion is attached to the mandamus petition as Appendix F thereof. In that opinion Judge Caffey said, among other things:

"Whether the petition has been filed prematurely, as urged by the plaintiff, cannot be satisfactorily determined from a mere consideration of the petition itself and the arguments advanced pro and con. This can be decided only upon the evidence adduced at the hearing as to presently existing conditions."

and

"The petition is not an attempt by Alcoa to relitigate the question of its monopoly on August 14, 1940, the date when the taking of testimony closed. That question was decided against it by the Circuit Court of Appeals and it is now res adjudicata. But the court recognized that conditions in the industry had so changed that it would not necessarily follow that Alcoa would continue to have a monopoly (148 F. 2d 416, 432).

"Furthermore, whether or not Alcoa should now be dissolved, a question specifically left open by the Circuit Court of Appeals, cannot be decided until it is determined whether or not it still has a monopoly of the ingot market."

In Judge Caffey's opinion, above mentioned, the Court suggested that counsel confer with the Court as soon as possible after service of the answer of the United States in order to fix an early date for a hearing prior to the summer vacation period. The answer was filed by the United States on June 13, 1947, by which time it was obvious that it would not be possible to obtain a hearing on the issue before fall.

Accordingly, on June 17, 1947, the following-mentioned counsel for the United States, George B. Haddock, Special Assistant to the Attorney General, and William Watson Smith and Leon E. Hickman, of Pittsburgh, and L. Homer Surbeck, of New York, counsel for Alcoa, appeared before Judge Caffey in his chambers for the purpose of having a date for the hearing fixed. Judge
353 Caffey suggested that counsel should endeavor to agree upon the date, and counsel for the Government and Alcoa thereupon discussed the question in the presence of Judge Caffey and agreed upon October 15 as the date for trying the issue. Accordingly, Judge Caffey there and then directed that the hearing be fixed for October 15, 1947.

Pendency of this mandamus proceeding in this Court may further delay the trial of the issues set for hearing before Judge Caffey on October 15, 1947.

Alcoa respectfully submits that when plaintiff has failed to raise any question concerning the propriety of including in the judgment of April 23, 1946, the provisions in paragraph 12 thereof (permitting Alcoa to apply to the court) until more than sixteen months after the entry of said judgment and when plaintiff within about a month before the trial set for October 15, 1947, files this mandamus proceeding in this Court at a time when the argument can be heard only a few days in advance (if at all in advance) of October 15, 1947, this action should not be permitted to delay said trial before Judge Caffey.

On September 11, 1947, Alcoa presented to Honorable Edward A. Conger, a United States District Judge for the Southern District of New York, petitions requesting the issuance of subpoenas addressed to 12 individuals and three corporations, all of whom reside outside of the Southern District of New York and more than 100 miles from the place where the trial will be held, requiring the appearance of said witnesses at the said trial on October 15, 1947; six of which subpoenas are subpoenas *duces tecum* requiring the production of many records and documents. Pursuant to said petition, Judge Conger, on September 11, 1947,
354 entered orders directing the Clerk of the Court to issue the said subpoenas and directing the service of said subpoenas in the respective districts within which the said witnesses, respectively, reside or are found. The said petitions were pre-

sented to Judge Conger before Alcoa or its counsel had any notice or knowledge of the filing of the mandamus proceeding in this Court. The first notice or knowledge thereof obtained by Alcoa or by any of Alcoa's counsel was obtained at about 4:20 o'clock P. M. on September 11, 1947, when a copy of the petition for the mandamus was served upon New York counsel for Alcoa by a representative of the Department of Justice. At least thirteen of these subpoenas have been served and service of those remaining is actually proceeding and any interference with the subpoenas or any interruption in the service or failure to make service would seriously impair Alcoa's rights because so little time is left until the date of the trial and sufficient time must be allowed to permit the witnesses to produce the various records and documents and to appear at the trial in New York City.

Subdivision 12. Alcoa admits the averments of paragraph 1 of the mandamus petition with the qualification that there were many other provisions of the judgment which were not reversed.

Subdivision 13. Alcoa admits the averments of paragraph 2 of the mandamus petition with the qualification that they are an incomplete characterization of the opinion of this Court reported in 148 F. (2d) 416, to which opinion respondent refers.

Subdivision 14. Alcoa admits the averments of paragraph 355 3 of the mandamus petition with the qualification that they are an incomplete characterization of the mandate Alcoa refers to the order for mandate, a copy of which is attached to the petition as Appendix B for a complete statement of the mandate.

Subdivision 15. Alcoa admits the averments of paragraph 4 of the mandamus petition with the qualification that they are an incomplete summary of the judgment they purport to characterize. Alcoa refers to the judgment of April 23, 1946, a copy of which is appended to the petition as Appendix C for a complete statement of its provisions.

Subdivision 16. Alcoa admits the averments of paragraph 5 of the mandamus petition with the qualification that they are an incomplete summary of the petition of Alcoa which they purport to characterize. Alcoa refers to its petition, a copy of which is attached as Appendix D to the mandamus petition, for a complete statement of its averments.

Subdivision 17. Alcoa admits the averments of paragraph 6 of the mandamus petition with the qualification that the motion, memorandum opinion, order and answer therein referred to are incompletely characterized. Alcoa refers to Appendices E, F, G and H attached to the petition for a complete statement of such documents, respectively.

Subdivision 18. Alcoa admits the averments of paragraph 7 of the mandamus petition with the qualification that October 15, 1947, was fixed as the trial date by agreement between counsel for plaintiff and counsel for Alcoa at a conference held in Judge Caffey's chambers on June 17, 1947, and accepted by Judge Caffey because it represented the wishes of counsel for both parties.

350 *Subdivision 19.* Referring to paragraph 8 of the mandamus petition, it is true that the District Court has only the authority to determine the remedy, if any, necessary under the opinion and mandate of this Court but the District Court has discretion on the question of the procedure to be followed in applying the test laid down in the opinion and mandate on the question of remedy.

It is true that the District Court has no authority to impair or frustrate the determination of the question of remedy and nothing of the kind has been attempted by the Court.

It is true that the opinion and mandate of this Court settled as the law of the case to be followed by the District Court that Alcoa, in August, 1940, had a monopoly of, and had monopolized, the aluminum ingot market in violation of the Sherman Act, leaving open for the District Court only the question of appropriate relief.

It is also true that plaintiff has not filed in the District Court any application for dissolution or other relief.

Alcoa denies the remaining allegations of fact in subdivisions (a) and (b) of paragraph 8 and, in so far as the said subdivisions contain statements with respect to the law, Alcoa submits that it is under no obligation to make answer thereto and Alcoa therefore neither admits nor denies any such statements with respect to the law.

Referring to subdivision (c) of paragraph 8, Alcoa does not admit the partial statement therein contained with respect to the opinion and mandate of this Court and Alcoa refers to the opinion and mandate of this Court for the terms thereof. The remaining allegations of subdivision (c) of paragraph 8 are answered, so far as answer is required, in subdivision 10 above.

357 *Subdivision 20.* Alcoa denies the allegations of paragraph 9 of the mandamus petition.

Wherefore Alcoa prays:

1. That the petition of the plaintiff for a writ of mandamus directing Judge Caffey to execute the mandate of this Court, to vacate so much of paragraph 12 of the judgment of April 23, 1946, as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly of the aluminum ingot market and to dismiss the petition of Alcoa be dismissed.

2. That plaintiff's petition to stay the trial proceedings fixed to commence in the District Court on October 15, 1947, be denied and that on the contrary this Court shall direct that the expediency of this proceeding in this Court shall not delay the beginning and conduct of the said trial, subject, however, to any further order which may be made by this Court in regard thereto.

ALUMINUM COMPANY OF AMERICA,
By WILLIAM WATSON SMITH,

FRANK B. INGERSOLL,

LEON E. HICKMAN,

SMITH, BUCHANAN & INGERSOLL,

1025 Union Trust Building, Pittsburgh, Pa.,

CHARLES E. HUGHES, Jr.,

L. HOMER SURECK,

HUGHES, HUBBARD & EWING,

1 Wall Street, New York, New York,

Its Counsel.

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

October Term, 1947

Motion Argued October 14, 1947—Decided October 28, 1947

Docket No. 19396

UNITED STATES, PETITIONER

v.

FRANCIS G. CAFFEY, DISTRICT JUDGE, RESPONDENT

Before L. HAND, SWAN, and AUGUSTUS N. HAND, Circuit Judges

On petition by the plaintiff in the action of United States v. Aluminum Company of America, for a mandamus, directing Judge Caffey, a judge of the District Court for the Southern District of New York "to execute the mandate of this Court, to vacate so much of paragraph 12 of the judgment of April 23, 1946 as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly, and to dismiss the petition of Alcoa," which prayed that the court declare that "Alcoa" no longer had any monopoly in ingot aluminum.

Leonard J. Emmerglick, for the petitioner.
William Watson Smith, opposed.

L. HAND, Circuit Judge:

We reversed the judgment of the district court in this cause in an opinion filed March 12, 1945,¹ and our mandate went down on March 28th. The district court entered a judgment on the mandate on April 23, 1946, before which on September 21, 1945, the Surplus Property Board had made a report to Congress on "aluminum plants and facilities"; and after which the War Assets Administration filed a First Supplementary Report on February 12, 1947. No hearings in the action appear to have been had in the district court, but on March 31, 1947, "Alcoa"—to adopt the name which we used in our original opinion—filed in the district court a petition, invoking the jurisdiction of that court, reserved under a provision in Article Twelve of the decree of April 23, 1946. This petition prayed that the court enter a final judgment

"adjudicating that the Aluminum Company of America no longer has a monopoly of the aluminum ingot market of the United States and that, in consequence of the termination of such monopoly of the aluminum ingot market, competitive conditions have been restored in the aluminum industry." To the petition "Alcoa" annexed ten exhibits, designed to show that the distribution of the producing plants owned by the United States—under the action of the Surplus Property Board and the War Assets Administration—had already progressed so far as definitively to destroy the monopoly which we had held to exist on April 14, 1940 (the date of the last evidence taken in the original trial), and to demand a decree dismissing the complaint, insofar as it asked dissolution of the defendant. The plaintiff moved to dismiss this petition on the ground that the Twelfth Article of the decree of April 23, 1946, was not authorized by our mandate; but Judge Caffey denied the motion on June 2, 1947, declaring that, although it was not open to him to question that a monopoly had existed on August 14, 1940, "Alcoa" was not seeking to relitigate that question, and that "whether or not 'Alcoa' should now be dissolved, a question specifically left open by the Circuit Court of Appeals, cannot be decided until it is determined whether or not it still has a monopoly of the ingot market." The plaintiff filed an answer to this petition on June 12, 1947; and, while the hearing upon these issues was pending, moved in this court on September 11, 1947, for a mandamus, asking the relief that we have quoted at the outset.

The first—and, as we view it, the only—question which we need decide, is as to our jurisdiction to issue the writ. The term of this court in which our mandate was issued ended on September 30, 1945,² on which day we lost power to change it except as to matters of form.³ Our power to review interlocutory orders of the district court by mandamus or the like, exists only as an incident to our jurisdiction to entertain an appeal from a judgment of that court; and it is a power to be exercised only in the most exceptional circumstances.⁴ Logically therefore, and also because that is the most convenient course, before deciding whether such circumstances exist here, we must first decide whether we should have jurisdiction over an appeal from another judgment in the action; and if we should not, we must deny the motion. Our only jurisdiction arises from a certificate of the Supreme Court, issued under the proviso to § 20 of Title 15, U. S. C., added by the amendment of June 9, 1944⁵ which declares that in an action under the Anti-Trust Laws, if there be no qualified quorum of justices who

² Rule 3 of the Rules of the Circuit Court of Appeals for the Second Circuit.

³ Fairmont Creamery Co. v. Minnesota, 275 U. S. 70, 72.

⁴ In Re Fahey, 331 U. S.

⁵ 58 Stat. 272.

can hear an appeal from a judgment of the district court, the Supreme Court shall so certify to the proper circuit court of appeals "which court shall thereupon have jurisdiction to hear and determine the appeal in such case." We hold both because of the text, and of the purpose, of this amendment that it confines our jurisdiction to the determination of the appeal certified; and that our power ends with the end of the term at which our mandate goes down, quite as though the mandate finally disposed of the whole litigation. Verbally, there can be no doubt: if the intent had been that we should retain jurisdiction over the action to the end, Congress would not have limited us to a decision of "the appeal"; it would have transferred all appellate jurisdictions. The purpose of the amendment accords with this construction, for the change was merely to provide a way out of what would otherwise have foreclosed any conclusion of the action. As soon as the situation changes which has barred progress, there is no conceivable reason why the Supreme Court shall not resume its accustomed power of review. The argument that our decision will embarrass that court in deciding a later appeal is patently without basis; nothing is more common than for one court to construe the scope of a judgment of another court—it is a question which always rises upon a plea of res judicata. Hence we hold that, since the plaintiff's motion was to compel the district court to conform its action to our mandate, it must be addressed to the Supreme Court. This would be true, though the membership of that court were the same as when it issued its certificate on June 12, 1944; for, even so, we should have no warrant for assuming that the disqualifications of the justices then existing, still continued until we were so advised by a second certificate.

We are asked to avoid this result by treating the motion as one to "clarify" our mandate, a power which we are assured, a court must always retain. We may accept it that, since a mandate incorporates the opinion on which it issues, ordinarily the court which issues the mandate will have an advantage in its interpretation.* Be that as it may, no such consideration can extend our jurisdiction. We are holding that the Supreme Court alone will have jurisdiction—on appeal or by mandamus—to decide whether the district court has acted in accordance with our mandate; and obviously it cannot do this without deciding what the mandate means. If, under the guise of "clarifying" our opinion, we should put a gloss upon it, we should invade the jurisdiction of the Supreme Court, even though we formally refuse to decide whether Judge Caffey's order was right or wrong. As well might the court which had entered judgment in one action,

* Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 141.

be asked to "clarify" its meaning in aid of another court which was called upon to enforce the judgment in another action. The division of jurisdiction which the statute provides, inevitably imposed this limitation upon what perhaps would otherwise have been our powers: the interpretation of our mandate cannot be in the hands of two independent courts. Indeed, the argument probably misapprehends what is meant by "clarifying" an opinion. When a court is called upon to interpret written language, it may be faced, and it usually is, with deciding what the utterers would have said as to an occasion about which they did not express themselves at all, and which usually they did not have in mind. We are rightly accustomed to say that the utterers "intended" what the court puts into their mouths; indeed that is what we mean by interpretation. If all that the parties at bar mean by asking us to "clarify" our opinion, is to interpret it in this sense, they are asking us to do what we have just held to be within the power of the Supreme Court alone: i. e. they are asking us to interpret our mandate as part of the process of deciding whether Judge Caffey's order was in conformity with it. If on the other hand they mean that we shall add words to our mandate which will give it a different scope from that which interpretation, simpliciter, would give it, they are necessarily asking us to exercise a power which ended with the term of court. Conceivably we might have that power, if we had jurisdiction over the second appeal as well as the first. Conceivably, the Supreme Court will have that power on a second appeal, acting as our successor. It is enough that we have no such power now and could not gain it except by a second certificate from that court.

To what we have said we wish to add a cautionary possible exception. If our mandate had disposed of the whole litigation, leaving nothing but ministerial acts to be done, we will not say that our jurisdiction would necessarily have ended when it was filed; arguendo, we will assume that we should have the power to compel its execution. The difference between that and the jurisdiction we are disclaiming is indeed one of degree; and we are quite aware that so equivocal a word as "ministerial" solves nothing. Here, however, our mandate left undecided the most substantial issue of all; i. e. dissolution; that was the coup de grace which the plaintiff chiefly desired and still desires, and which the defendant chiefly feared and still fears. It depends upon facts which, for the most part, have come into existence since the record before us was closed, and the outcome was not even foreshadowed in what we decided. Manifestly, if the Supreme Court is now able to act, it should decide it, for it involves the proper reconstruction of one of our great industries. True, the question at

har is not dissolution; but only whether "Alcoa" should be permitted to bring on that issue for trial, or must await the plaintiff's pleasure; more precisely, whether Article Twelve of the decree on mandate was within our mandate. On the face of it, that may seem no more than the kind of procedural detail which might fall within our reserved powers, if we have any. Apparently that is not true; both parties regard the time of decision as of high, perhaps critical, importance, and it does not take much imagination to see that it may be. Indeed, its importance is the plaintiff's justification for resorting to mandamus. Trivial as the point may on the surface appear, we are not therefore disposed to class it among those over which we are assuming that we may retain power; rather we think that it penetrates deeply enough into the "merits" of the issue of dissolution itself, to render any decision of it by us a limitation upon the complete freedom of the Supreme Court in dealing with that issue.

The motion is denied.

United States Circuit Court of Appeals, Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court-house, in the City of New York, on the 28th day of October, one thousand nine hundred and forty-seven.

Present: Hon. LEARNED HAND, Hon. THOMAS W. SWAN, Hon. AUGUSTUS N. HAND, Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ALUMINUM COMPANY OF AMERICA, ET AL., DEFENDANTS-APPELLEES

A motion having been made herein by counsel for appellant for a writ of mandamus addressed to Hon. Francis G. Caffey, one of the district judges of the United States District Court for Southern District of New York,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

ALEXANDER M. BELL, Clerk.

In the United States Circuit Court of Appeals for the Second
Circuit

UNITED STATES OF AMERICA, PETITIONER

v.

HONORABLE FRANCIS G. CAFFEY, UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENT

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

ALUMINUM COMPANY OF AMERICA, DEFENDANT-APPELLEE

Equity No. 85-73

Answer of Francis G. Caffey

To the Honorable LEARNED HAND, THOMAS W. SWAN, and AUGUSTUS N. HAND, United States Circuit Judges:

Referring to the petition of the plaintiff (United States of America) filed in this Court on September 11, 1947, praying for a writ of mandamus (which petition is hereinafter referred to as the mandamus petition) Francis G. Caffey (hereinafter called "respondent") makes answer as follows:

For clarity, respondent will make the main part of his answer at the outset, before taking up the numbered paragraphs of the mandamus petition.

1. Respondent avers that he has faithfully complied with the opinion and mandate of this Court and believes that he has not misconstrued either of them.

2. In the mandamus petition the first prayer asks that this Court shall issue a writ of mandamus directing respondent to execute the mandate of this Court, to vacate so much of paragraph 12 of the judgment of April 23, 1946, as reserves jurisdiction to enable Alcoa (Aluminum Company of America) to apply for a determination whether it still has a monopoly and to dismiss the petition of Alcoa.

So far as the prayer "to execute the mandate of this Court" is concerned, respondent avers (as set forth in paragraph 1 above) that he has thus far faithfully executed said mandate and respondent intends to continue faithfully to execute the same.

The other matters referred to in the prayer will be dealt with hereinafter.

3. Plaintiff seeks to obtain a writ of mandamus from this Court requiring respondent to strike from the judgment entered April 23,

1946 (a copy of which is appended to the mandamus petition as Appendix C) the following quoted language contained in paragraph 12 thereof in which jurisdiction of the case was retained in order that the Attorney General might institute certain further proceedings as therein set forth and "for the purpose of enabling Aluminum Company of America to apply to this Court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States."

4. As respondent understands the opinion and mandate of this Court, there is nothing in either of them which expressly or by implication is opposed to the inclusion of the above-quoted language in paragraph 12 of the judgment.

This Court in its opinion and mandate clearly laid down the test to be applied on the question of the remedy, but discretion on the question of the procedure to be followed in applying that test is in the District Court as respondent believes and avers.

Under the opinion and mandate respondent believes that he had the discretion to permit Alcoa, as well as the Attorney General, to go into court seeking the application of the test prescribed by this Court for determining the question whether the ingot monopoly had been terminated. Respondent believes that the door should be left open for either party who seeks to have the Court apply this test. If respondent had that discretion, he respectfully submits that it was a proper exercise thereof to insert in paragraph 12 of the judgment the language which has been referred to:

5. On June 4, 1945, plaintiff moved for the settlement of the judgment and on December 7, 1945, the Department of Justice, on behalf of the plaintiff, wrote to respondent asking for immediate entry of the judgment, leaving for future determination the question whether the aluminum ingot monopoly had terminated. On December 13, 1945, respondent replied to the letter of December 7, 1945. Copies of the letters of December 7, 1945, and December 13, 1945, are appended hereto.

On June 26 and 27, 1945, and again on March 19, 1946, counsel for all parties appeared before respondent and argued the question of the form of the judgment. The Department of Justice had submitted to respondent on June 4, 1945, a form of judgment in which only the Attorney General was given the right to apply to the court under the reserved jurisdiction. On June 21, 1945, counsel for Alcoa filed with respondent a suggested form of judgment in which it was provided, in substance, that jurisdiction be retained for the purpose of enabling any party to the judgment to apply to the court for a further judgment on the question whether the aluminum ingot monopoly had been terminated. At the oral argument before respondent on June 26, 1945, and by brief filed with respondent shortly thereafter, counsel for the

United States brought to respondent's attention this position of Alcoa's counsel. In these references counsel for the United States in no manner criticized or objected to this position of Alcoa's counsel but brought it to respondent's attention for the purpose of criticizing other portions of the form of judgment submitted by the latter.

On March 14, 1946, counsel for Alcoa filed with respondent a brief (of which the Government received a copy) making suggestions as to the form of judgment in which it was requested that in the portion of the judgment retaining jurisdiction for the purpose of enabling the Attorney General to institute certain proceedings therein stated, it should be stated that jurisdiction was also retained for the purpose of enabling Alcoa to apply to the court in substantially the same form of provision which is included in paragraph 12 of the judgment and is quoted in paragraph 3 of this answer. At the oral argument before the Court, five days later, representatives of the Department of Justice took no exception to this request which had been made by Alcoa. Neither at the above-mentioned oral arguments nor in any of the briefs filed with respondent thereafter nor at any other time did any representative of the plaintiff or of the Department of Justice object in any way to the inclusion in the judgment of the provision giving Alcoa the above-mentioned right of application to the court and, so far as respondent knows, no question was ever raised by anyone concerning the propriety of the said provision until the filing of plaintiff's petition for a mandamus in this Court on September 11, 1947.

If there is anything in the opinion or mandate of this Court or any other sound reason which is opposed to the inclusion of the said provision in paragraph 12, respondent would have been most willing to receive any suggestion or argument to that effect from the Department of Justice, before the entry of the judgment, and would have given full consideration thereto.

6. Respondent believes and avers that all of the following are questions of procedure within respondent's discretion, viz (a) respondent's action in inserting in paragraph 12 of the judgment of April 12, 1946, the provisions enabling Alcoa, as well as the Attorney General, to petition the District Court to apply the test laid down by this Court on the question of remedy; (b) respondent's action (hereinafter mentioned) in entertaining, and denying plaintiff's motion to dismiss, the petition of Alcoa filed March 31, 1947, under paragraph 12 of the judgment (a copy of which petition is attached to the mandamus petition as Appendix D); (c) respondent's action (hereinafter mentioned) in fixing for trial on October 15, 1947, the issues raised by Alcoa's petition (Appendix D) and plaintiff's answer thereto filed June 13, 1947 (a

copy of which answer is appended to the mandamus petition as Appendix H).

7. Respondent believes and avers that the judgment of April 23, 1946, finally adjudicated every issue in this case save only the question of what remedy, if any, should be granted.

Respondent believes and avers that, if there was any error in the judgment (which respondent denies), it could be corrected only by appeal and not by writ of mandamus.

8. Respondent admits the averments of paragraph 1 of the mandamus petition with the qualification that there were many other provisions of the judgment which were not reversed.

9. Respondent admits the averments of paragraph 2 of the mandamus petition with the qualification that they are an incomplete characterization of the opinion of this Court reported in 148 F. (2d) 416, to which opinion respondent refers.

10. Respondent admits the averments of paragraph 3 of the mandamus petition with the qualification that they are an incomplete characterization of the mandate. Respondent refers to the order for mandate, a copy of which is attached to the petition as Appendix B for a complete statement of the mandate.

11. Respondent admits the averments of paragraph 4 of the mandamus petition with the qualification that they are an incomplete summary of the judgment they purport to characterize. Respondent refers to the judgment of April 23, 1946, a copy of which is appended to the petition as Appendix C for a complete statement of its provisions.

12. Respondent admits the averments of paragraph 5 of the mandamus petition with the qualification that they are an incomplete summary of the petition of Alcoa which they purport to characterize. Respondent refers to the petition of Alcoa, a copy of which is attached as Appendix D to the mandamus petition, for a complete statement of its averments.

13. Respondent admits the averments of paragraph 6 of the mandamus petition with the qualification that the motion, memorandum opinion, order and answer therein referred to are incompletely characterized. Respondent refers to Appendices E, F, G, and H attached to the petition for a complete statement of such documents, respectively.

In paragraph 6 of the mandamus petition reference is made to plaintiff's motion to dismiss Alcoa's petition filed March 31, 1947, a copy of which motion of the plaintiff is attached to the mandamus petition as Appendix E. Neither in that motion (Appendix E) nor in any oral argument made or brief submitted to respondent by plaintiff's counsel in regard thereto was there any suggestion whatever that there was any impropriety in the portion of paragraph 12 of the judgment of April 23, 1946, permitting

Alcoa to apply to the court. The plaintiff in its said motion and oral argument to respondent made thereon and brief submitted to respondent laid great stress on the assertion that Alcoa's petition of March 31, 1947, had been filed prematurely. On this question, respondent in his opinion, a copy of which is appended to the mandamus petition as Appendix F, made the following statement:

"Whether the petition has been filed prematurely, as urged by the plaintiff, cannot be satisfactorily determined from a mere consideration of the petition itself and the arguments advanced pro and con. This can be decided only upon the evidence adduced at the hearing as to presently existing conditions."

14. Respondent admits the averments of paragraph 7 of the mandamus petition with the qualification that October 15, 1947, was fixed as the trial date by agreement between counsel for plaintiff and counsel for Alcoa at a conference held in respondent's chambers on June 17, 1947, and accepted by respondent because it represented the wishes of counsel for both parties.

15. Referring to paragraph 8 of the mandamus petition, it is true that respondent has only the authority to determine the remedy, if any, necessary under the opinion and mandate of this Court but respondent has discretion on the question of the procedure to be followed in applying the test laid down in the opinion and mandate on the question of remedy.

It is true that the respondent has no authority to impair or frustrate the determination of the question of remedy and nothing of the kind has been attempted by respondent.

It is true that the opinion and mandate of this Court settled as the law of the case to be followed by the District Court that Alcoa, in August 1940, had a monopoly of and had monopolized the aluminum ingot market in violation of the Sherman Act, leaving open for the District Court only the question of appropriate relief.

It is also true that plaintiff has not filed in the District Court any application for dissolution or other relief.

Respondent denies the remaining allegations of fact in subdivisions (a) and (b) of paragraph 8; in so far as the said subdivisions contain statements with respect to the law, respondent submits that he is under no obligation to make answer thereto and respondent therefore neither admits nor denies any such statements with respect to the law.

16. Referring to subdivision (c) of paragraph 8 respondent does not accept the partial statement therein contained with respect to the opinion and mandate of this Court and respondent refers to the opinion and mandate for the terms thereof.

The remaining allegations in subdivision (c) of paragraph 8 deal with issues affirmed by Alcoa in its petition and denied by

plaintiff in its answer thereto. These are some of the issues pending before respondent for decision in the trial set for October 15, 1947. Respondent declines to form or express any opinion on these issues until the evidence has been submitted upon said trial.

17. Respondent denies the allegations of Paragraph 9 of the mandamus petition.

Wherefore respondent prays

That the petition of the plaintiff for a writ of mandamus directing respondent to execute the mandate of this Court, to vacate so much of paragraph 12 of the judgment of April 23, 1946, as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly of the aluminum ingot market and to dismiss the petition of Alcoa be dismissed.

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
SMITH, BUCHANAN & INGERSOLL,
1025 Union Trust Building, Pittsburgh, Pa.

CHARLES E. HUGHES, Jr.,
L. HOMER SURRECK,
HUGHES, HUBBARD & EWING,
1 Wall Street, New York, New York,
Counsel for Honorable Francis G. Caffey.

14TH FLOOR, 30 BROAD STREET
NEW YORK 4, NEW YORK

60-13-0

LSA : hba
DECEMBER 7, 1945.

Re: United States v. Aluminum Company of America, et al.,
Equity No. 85-73

HONORABLE FRANCES G. CAFFEY,
United States District Judge,
United States Court House,
Foley Square, New York 7, New York.

DEAR JUDGE CAFFEY: The writer inquired yesterday by telephone as to the prospect of an early decision by Your Honor upon the form of the proposed judgment after mandate in the above-entitled case, filed with Your Honor on June 4, 1945, and argued orally on June 26, 1945. Your Honor indicated that because of the pendency of the Attorney General's report to Congress of last September and the indication in the opinion of the Circuit Court of Appeals that the question of dissolution should await action by the Surplus Property Board, you had deferred entry of the proposed judgment. The writer then stated that there was ap-

parently some misconception as to the situation on Your Honor's part since all parties in their briefs had replied to the question contained in Your Honor's letter to counsel of July 3, 1945, that the present entry of a judgment of the type debated before Your Honor on June 26, 1945, should not be deferred to await action by the Surplus Property Board, but that it was only the decision on the question of dissolution which the appellate court had said should be thus postponed. In confirmation of this statement, the writer feels he should direct your attention specifically to page 4 of "Reply Brief of Alcoa Concerning Judgment," dated September 7, 1945, where it is stated:

"Apparently all parties are agreed that the District Court may enter a judgment at this time with respect to the so-called price squeeze and Aluminum Ltd., regardless of what disposition is made of the ingot monopoly issue."

The position of Aluminum Ltd. is set forth at page 4 of its "Memorandum in Support of Final Judgment Proposed by Defendants Aluminum Limited," etc., and that of the plaintiff at pages 6-10 of "Brief for the United States in Support of Proposed Judgment." We believe, for the reasons set forth at pages 6-10 of our said brief, that the mandate requires immediate entry of the injunctions under consideration and that it would be error for you to postpone such entry until the Surplus Property Board has acted with respect to the disposition of Government-owned aluminum plants. Moreover, as reconversion gets under way and, for the first time since the war, there is competition in the sale of aluminum sheet as well as in foreign trade in aluminum, it is essential that the injunctions against the price squeeze and illegal cartel arrangements should be promptly imposed in order to protect the public during this crucial period. The imposition of these injunctions will encourage potential competitors to proceed with plans to seek to enter into competition with the defendants and to bid for the purchase of Government plants.

The plaintiff feels that any further delay in the entry of the order may seriously impair the possibilities of establishing a competitive industry in the postwar period. Consequently, we cannot urge you too strongly to take the matter under consideration and enter the judgment at an early date.

A copy of this letter is being sent to counsel for the defendants.

Respectfully yours,

WENDELL BERGE,
Assistant Attorney General.
By LAWRENCE S. APPEY,
Chief, New York Office,
Antitrust Division.

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cc: Hughes, Hubbard and Ewing, Esqs., 1 Wall Street, New York, N. Y. Milbank, Tweed & Hope, Esqs., 15 Broad Street, New York, N. Y. Baldwin, Todd & Lefferts, Esqs., 120 Broadway, New York, N. Y. Leon E. Hickman, Esq., Smith, Buchanan & Ingersoll, Esqs., 1025 Union Trust Building, Pittsburgh, Pa.

[Copy]

DECEMBER 13, 1945.

Re: U. S. v. Aluminum Company, et al., E 85-73

HON. WENDELL BERGE,

*Assistant Attorney General,**14th Floor, 30 Broad Street, New York 4, N. Y.*

DEAR MR. BERGE: I have your letter of the 7th instant. Promptly after the final briefs were received last September I spent between two and a half and three weeks in studying problems incident to preparing the judgment with respect to the questions involved other than those relating to dissolution of the Aluminum Company.

From reading your communication I get the impression that you realize that, because I felt that enactment of the measure suggested by the Attorney General might materially affect the form of the judgment, temporarily I suspended active work on the case (except for what has been done by my law clerk). However that may be, it is a fact that I did suspend for the reason given and I now think I should not wait longer.

It is agreeable to me to push preparation of the judgment to a conclusion. To that end I have arranged to be substantially relieved from my court assignments so as to resume the work in this case.

Copy of my letter of today is being sent to counsel for the Aluminum Company and Aluminium Limited.

Very truly yours,

(Sgd.) FRANCIS G. CAFFEY.

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In the United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, PETITIONER

v.

HONORABLE FRANCIS G. CAFFET, UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENT

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ALUMINUM COMPANY OF AMERICA, DEFENDANT-APPELLEE

Eq. 85-73

COMMONWEALTH OF VIRGINIA,

City of Richmond, ss:

W. T. Brunot, being duly sworn, deposes and says;

That he is over the age of twenty-one (21) years, resides at 1601 Wilmington Avenue, Richmond, Virginia, and is the Controller of Reynolds Metals Company, a Delaware corporation, having its head office at 301 East Grace Street, Richmond, Virginia, which, together with its subsidiaries, is engaged in all phases of the aluminum business starting with the mining of bauxite and ending with the manufacture and sale of not only ingot and sheet, but also of finished aluminum consumer products.

That in his capacity as said Controller he has ultimate responsibility for, and custody of, by far the majority of the accounting books and records of said company and its said subsidiaries, and of the accounting memoranda, statements and reports made in conducting the business of the said company and its subsidiaries, or made for information of, or use by, officials, employees and agents of the company and its subsidiaries in conducting the business of the company and its subsidiaries, or for the information of stockholders of the company, pertaining to bauxite, alumina, pig and ingot, and sales.

That, because of his ultimate responsibility for, and custody of, the aforesaid records of said company, he studied and made himself familiar (immediately after the service hereafter referred to) with a certain civil subpoena, issued out of the District Court of the United States, Southern District of New York, in United States of America, Plaintiff, against Aluminum Company of America, et al., Defendants (Equity No. 85-73), under date of September 15, 1947, addressed to said Reynolds Metals Company, and served on said company on September 16, 1947, and that he

is now familiar with the same, since he and employees of said company under his supervision have worked continuously since that date as a result of, and on the topics covered by, said subpoena.

That the subpoena calls for the production of all books and records containing information showing, for each month from January 1, 1941, to September 1, 1947, the production, purchases, use and sales of bauxite, alumina, aluminum, aluminum scrap; the monthly inventory of aluminum, aluminum alloy and aluminum scrap; the monthly amounts of bauxite, alumina, aluminum, and scrap under contract which was sold to others; monthly sales of fabricated products; reports and memoranda made in the course of conducting business containing all of the above information; contracts covering many of its plants; power arrangements; and many other intimate details of the company's business.

That this information, which I estimate may require 30 truck-loads from widely separated locations, is so vital and confidential that its disclosure to our competitor, the Aluminum Company of America, or to any other competitor having a long-established dominant position in the aluminum industry, would enable it, if it so desired, to seriously impair our ability to compete in the industry. If the information is required to be produced and disclosed, the Aluminum Company of America could ascertain much more intimate knowledge of our company's business than many of our own executives. Most of the information is of such a restricted nature that it is kept under lock and key and is made available only to four or five designated top officials of our company and is not released to other officers and employees of the company.

That the books and records subpoenaed contain, in innumerable instances, on the same page not only the information called for but also cost analyses, profit margins by products and by individual customers, losses, prices, specifications, technological improvements, company policies and plans and other highly confidential data. The material to be produced contains virtually 100% of the data which a dominant competitor in the aluminum industry would need to stifle competition of a comparative newcomer in the industry.

(S) W. T. BRUNOT.

Sworn to before me this 3rd day of October 1947.

[SEAL]

MARY S. CRENSHAW,
Notary Public.

My Commission expires Oct. 12, 1949.

384 [Clerk's certificate to foregoing transcript omitted in printing.]

385 Supreme Court of the United States

No. 527, October Term, 1947

THE UNITED STATES OF AMERICA, PETITIONER

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK, ET AL.

Order allowing certiorari

Filed March 8, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed, Mr. Justice Murphy, and Mr. Justice Jackson took no part in the consideration or decision of this application.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, THE HONORABLE FRAN-
CIS J. CAFFEY, JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK, AND ALUMINUM COMPANY OF
AMERICA, A CORPORATION**

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT**

The Solicitor General prays that a writ of certiorari be issued to review a judgment of the Circuit Court of Appeals for the Second Circuit entered in this cause on October 28, 1947, which denied a petition of United States of America for a writ of mandamus directed to Honorable Francis G. Caffey, United States District Judge for the Southern District of New York (who retired subsequent to the judgment of the Circuit Court of Appeals), to execute a mandate of the Circuit Court of Appeals and dismiss proceedings inconsistent therewith.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 358-362) is reported in 164 F. (2d) 159. The opinion of that Court upon which the mandate is based is reported in 148 F. (2d) 416.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 28, 1947. The jurisdiction of this Court is invoked under Section 29 of 15 U. S. C. as amended by the Act of June 9, 1944, Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 262 of the Judicial Code.

QUESTION PRESENTED

Whether, following hearing and determination of an appeal by a circuit court of appeals pursuant to a certificate from this Court under Section 29 of 15 U. S. C. as amended by the Act of June 9, 1944, jurisdiction to issue the writ of mandamus herein sought to compel execution of the mandate of the Circuit Court of Appeals and the dismissal of proceedings inconsistent with the mandate, resides in this Court or in the Circuit Court of Appeals.

STATUTES INVOLVED

The Act of June 9, 1944, c. 239, 58 Stat. 272 (15 U. S. C., Supp. V, 29) provides in part as follows:

In every suit in equity brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided, however,* That if, upon any such appeal, it shall be found that, by reason of disqualification, there shall not be a quorum of Justices of the Supreme Court qualified to participate in the consideration of the case on the merits, then, in lieu of a decision by the Supreme Court, the case shall be immediately certified by the Supreme Court to the circuit court of appeals of the circuit in which is located the district in which the suit was brought which court shall thereupon have jurisdiction to hear and determine the appeal in such case, and it shall be the duty of the senior circuit judge of said circuit court of appeals, qualified to participate in the consideration of the case on the merits, to designate immediately three circuit judges of said court, one of whom shall be himself and the other two of whom shall be the two circuit judges next in order of seniority to himself, to hear and determine the appeal in such case, and it shall be the duty of the court, so comprised, to assign the case for argument at the earliest practicable date and to hear and determine the same, and the decision of the three circuit judges so designated, or of a majority in number thereof, shall

be final and there shall be no review of such decision by appeal or certiorari or otherwise.

Section 2 of the Sherman Act of July 2, 1890, c. 647, 26 Stat. 209 (15 U. S. C. 2) provides as follows:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 4 of the Sherman Act, 26 Stat. 209, as amended by the Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167 (15 U. S. C. 4) provides in part as follows:

The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

STATEMENT

This proceeding grows out of a case brought by the United States against Aluminum Company

of America (sometimes hereafter referred to as Alcoa) and other defendants to prevent and restrain violations of the Sherman Act. After a trial of more than two years' duration the District Court dismissed the complaint. An appeal was allowed by this Court, which, on June 12, 1944, declaring that a quorum of six Justices to hear the case was wanting, certified the appeal to the Circuit Court of Appeals for the Second Circuit pursuant to an amendment of June 9, 1944, to Section 29 of 15 U. S. C.

The Circuit Court of Appeals in an opinion filed on March 12, 1945, reversed the judgment of the District Court and held that Aluminum Company of America had monopolized and was monopolizing the aluminum ingot market of the United States in violation of Section 2 of the Sherman Act, 148 F. 2d 416. The Circuit Court of Appeals ordered judgment of monopolization and injunctions; as to the Government's prayer for dissolution the Circuit Court of Appeals committed to the District Court determination of whether Aluminum Company of America should be dissolved and the form of any dissolution, to be determined by the District Court after the agency charged with disposal of the Government's war-time aluminum plants and facilities should have performed its functions. The mandate of the Circuit Court of Appeals remanded the case to the District Court for proceedings not inconsistent with the opinion. (R. 15.)

On April 23, 1946, the District Court entered its judgment on the mandate, in which it held that the defendants had monopolized trade and commerce in aluminum ingot up to the close of the trial on August 14, 1940, in violation of the Sherman Act, and that the defendants had engaged in a price squeeze with respect to ingot and aluminum sheet prices; the court thereupon enjoined Alcoa and its officers from continuing the price squeeze (R. 16-34). The court retained jurisdiction of the cause until after the Surplus Property Administrator shall have proposed a plan for disposition of the Government owned aluminum facilities in order that the Attorney General might institute proceedings for the dissolution or partial dissolution of Alcoa or for the enforcement of such plan "and for the purpose of enabling Aluminum Company to apply to this court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States" (R. 33-34).

On March 31, 1947, pursuant to the quoted provision, Alcoa filed a petition in the District Court praying that a "final judgment" be entered adjudicating that Aluminum Company of America no longer has a monopoly of the aluminum ingot market of the United States and that, in consequence of the termination of such monopoly, competitive conditions have been restored in the aluminum industry (R. 35-94). The United States first moved unsuccessfully before Judge

Caffey to dismiss this petition (R. 95-98). After overruling the Government's motion, Judge Caffey set the question of Alcoa's present status as a monopoly for hearing on October 15, 1947 (R. 99-102). The United States on September 11, 1947, filed a petition for a writ of mandamus in the Circuit Court of Appeals for the Second Circuit to require Judge Caffey to execute the mandate of that court by vacating so much of paragraph 12 of the judgment of the District Court "as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly, and to dismiss the petition of Alcoa," and prayed further for dismissal of Alcoa's petition and a stay of the trial proceeding scheduled to commence on October 15, 1947 (R. 1-6).

The basis for the petition for mandamus was that the petition of Alcoa and the ruling of the District Court in sustaining it against the Government's objection and setting it for trial was in conflict with the mandate of the Circuit Court of Appeals since it would make the right to dissolution depend upon whether Aluminum Company of America presently has a monopoly, instead of depending upon a consideration of the remaining effects of adjudicated monopoly and the need to dissipate them and disable a monopolist, with a history of 28 years of active monopolization, from future monopolization. Additional grounds for granting mandamus were asserted to be that only the United States has standing to bring on pro-

ceedings for determination of the need for dissolution, and that the condition precedent fixed by the Circuit Court of Appeals for the District Court's inquiry into the need for dissolution—disposal of the Government's aluminum plants and facilities—has not occurred, inasmuch as the Congressionally approved disposal program is in its incipieney and has not been substantially executed. (R. 3-6; see the Government's petition for mandamus in this Court, No. ³²³—, Misc., and brief in support thereof, filed herewith, for a more complete statement.)

The Circuit Court of Appeals, by order filed October 28, 1947, dismissed the petition for mandamus upon the ground that it was without further jurisdiction in the cause and that any jurisdiction to enforce its mandate by mandamus was in this Court (R. 358-362).

The Circuit Court of Appeals concluded that jurisdiction to grant mandamus would exist only in aid of a future jurisdiction in the cause, and that since an appeal from a judgment following trial of the petition of Aluminum Company of America would be to this Court, the Circuit Court of Appeals was without authority to issue mandamus, or even to construe its mandate for the guidance of the District Court, unless this Court should again certify the case to the Circuit Court of Appeals because of inability to obtain a quorum.

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SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that its jurisdiction granted by certificate of this Court pursuant to Section 29 of Title 15 U. S. C. did not include jurisdiction to issue a writ of mandamus to require execution of the mandate of the Circuit Court of Appeals.

2. In holding that its authority to issue mandamus to require compliance with its mandate ended with the end of the term in which the mandate was directed to the District Court.

3. In holding that its jurisdiction to issue mandamus to require compliance with its mandate depended upon the existence of future jurisdiction in that court.

4. In holding that its authority to interpret its mandate ended with the end of the term in which the mandate was directed to the District Court.

REASONS FOR GRANTING THE WRIT

1. The Government believes that the District Court, in ordering a hearing at Alcoa's instance as to whether Alcoa presently has a monopoly, is proceeding in manner contrary to the mandate of the Circuit Court of Appeals. Mandamus is an appropriate remedy to require a lower court to obey the mandate of an appellate tribunal. *In re Sanford Fork & Tool Co., Petitioner*, 160 U. S. 247; *Gaines v. Rugg*, 148 U. S. 228; *In re Potts, Petitioner*, 166 U. S. 263; *Federal Communica-*

tions Comm'n v. Pottsville Broadcasting Co., 309 U. S. 134. The Government is unquestionably entitled to a determination by some appellate court as to whether the proceeding in the District Court is in conflict with the mandate of the Circuit Court of Appeals.

The question raised by this petition is whether jurisdiction to determine that issue lies in the Circuit Court of Appeals or in this Court. If the decision below is correct, this Court alone has such jurisdiction; because of that possibility the Government is filing herewith in this Court a separate motion for leave to file a petition for mandamus to compel the District Court to comply with the mandate of the Circuit Court of Appeals. If the decision below is incorrect, this Court would not entertain the Government's petition for mandamus, and the Government would lose its right to a determination of its right to mandamus in either court unless this Court grants this petition for certiorari and sets aside the decision below in this proceeding.

This case is obviously one of great public importance. As the Circuit Court of Appeals recognized (R. 361), it involves "the proper reconstruction of one of our great industries." Apart from this, the case falls within the general class of anti-trust equity suits which Congress has deemed of sufficient national significance to except from this Court's normal discretionary jurisdiction and to

permit direct appeal to this Court from the district courts. Except for the unique circumstance of lack of a quorum when the case first came to this Court, the entire appellate proceeding would have been here and not in the Circuit Court of Appeals.

We submit that the issue here presented as to which court shall decide whether the District Court's action is in conformance to the mandate is one upon which the Government is entitled to the conclusive determination which only this Court can provide, and that the point is clearly important enough to warrant the granting of certiorari.

2. The Government is not as much concerned in this matter with which court—Circuit Court of Appeals or Supreme Court—hears its application for mandamus as with assurance that one court or the other will do so. Nevertheless, the Government filed its petition originally with the Circuit Court of Appeals because it thought that court the proper tribunal. The normal rule, of course, is that the appellate court which enters a judgment, has jurisdiction to enforce it by writ of mandamus (*In re Sanford Fork & Tool Co.*, 160 U. S. 247, 256; *Ex Parte Krentler-Arnold Hinge Last Co.*, 286 U. S. 533; *Morris v. Securities and Exchange Commission*, 116 F. 2d 896, 898 (C. C. A. 2); *S. S. Kresge Co. v. Winget Kickernick Co.*, 102 F. 2d 740 (C. C. A. 8)), and this power exists

in aid of the appellate court's past jurisdiction, already exercised, without regard to whether the appellate court also possesses "future" jurisdiction over the controversy (*Sibbald v. United States*, 12 Pet. 488; *Heine v. Levee Commissioners*, 19 Wall. 655, 660; *Virginia v. Rives*, 100 U. S. 313, 316, 323, 327, 329; *Labette County Commissioners v. Moulton*, 112 U. S. 217. Cf. *Baltimore & Ohio Railroad v. United States*, 279 U. S. 781; *In re Washington & Georgetown Railroad Co.*, 140 U. S. 91 (mandamus deemed appropriate where amount in controversy was too small to support writ of error); *City Bank of Fort Worth v. Hunter*, 152 U. S. 512. (propriety of mandamus recognized where no further appeal was possible because the amount in controversy was below the jurisdictional requirement)).

3. Although Judge Caffey resigned on October 31, 1947 (after the Circuit Court of Appeals denied the application for mandamus), Judge Caffey's orders are the law of the District Court and must be followed by any judge designated to succeed Judge Caffey in the case, according to the rule and practice prevailing in the Second Circuit. *Commercial Union of America, Inc. v. Anglo-South American Bank, Ltd.*, 10 F. 2d 937 (C. C. A. 2); *In re Hines*, 88 F. 2d 423 (C. C. A. 2); *United States v. Steinberg*, 100 F. 2d 124 (C. C. A. 2); *Farmers' Loan and Trust Co. v. Miller*, 298 Fed. 758 (S. D. N. Y.); *Aachen & Munich*

Fire Insurance Co. v. Guaranty Trust Co., 24 F. 2d 465 (S. D. N. Y.).¹ That the writ of mandamus ultimately sought may be addressed to the inferior court as such is stated in *Virginia v. Rives*, 100 U. S. 313, 328.

CONCLUSION

This case is one of obvious public importance, and the question whether this Court or the Circuit Court of Appeals has jurisdiction to enforce the mandate of the latter court is one which should be finally determined by this Court. It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY 1948.

¹ Out of an abundance of caution the Government applied to the Senior Judge of the District Court for assignment of the case to another judge for the expressed purpose of enabling the Government, before applying for relief in this Court, to seek from the succeeding judge determination of whether Judge Caffey's orders would be reconsidered or, on the other hand, confirmed. The Senior Judge has declined so to assign the case, declaring:

"I don't see why you can't go ahead. I think the chances are a thousand to one that any Judge to whom the case may be assigned will follow Judge Caffey's ruling. The Circuit Court of Appeals has warned us on numerous occasions that that is the proper thing to do.

"* * * You can go ahead on that assumption that his ruling will stand." (See Appendix 2 to Petition for Writ of Mandamus.)

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 527

UNITED STATES OF AMERICA, PETITIONER

v.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK, THE HONORABLE FRANCIS J. CAFFEY, JUDGE
OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, AND ALUMINUM COMPANY OF
AMERICA, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 322-330) is reported in 164 F. (2d) 159. The opinion of that Court on the main issues in *United States v. Aluminum Company of America* is reported in 148 F. (2d) 416.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 28, 1947. The jurisdiction of this Court is conferred by Section 29 of 15 U. S. C. as amended by

the Act of June 9, 1944, Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 262 of the Judicial Code. Certiorari was granted on March 8, 1948.

QUESTION PRESENTED

After a Circuit Court of Appeals has heard and determined an appeal pursuant to a certificate from this Court under the Act of June 9, 1944, is jurisdiction to issue the writ of mandamus herein sought to compel execution of the mandate of the Circuit Court of Appeals, in this Court or in the Circuit Court of Appeals?

STATUTES INVOLVED

The Act of June 9, 1944, c. 239, 58 Stat. 272 (15 U. S. C., Supp. V, 29) provides as follows:

In every suit in equity brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided, however,* That if, upon any such appeal, it shall be found that, by reason of disqualification, there shall not be a quorum of Justices of the Supreme Court qualified to participate in the consideration of the case on the merits, then, in lieu of a decision by the Supreme Court, the case shall be immediately certified by the Supreme Court to the circuit court of appeals of the circuit in which is located the district in which the suit was brought which court shall thereupon have jurisdiction to hear and determine the appeal in such case, and it shall be the duty of the senior circuit judge of said circuit court of appeals, qualified to participate in the consideration of the case on the merits, to designate immediately three circuit judges of said court, one of whom shall be himself and the other two of whom shall be the two circuit judges next in order of seniority to himself, to hear and determine the appeal in such case and it shall be the duty of

the court, so comprised, to assign the case for argument at the earliest practicable date and to hear and determine the same, and the decision of the three circuit judges so designated, or of a majority in number thereof, shall be final and there shall be no review of such decision by appeal or certiorari or otherwise.

If, by reason of disqualification, death or otherwise, any of said three circuit judges shall be unable to participate in the decision of said case, any such vacancy of vacancies shall be filled by the senior circuit judge by designating one or more other circuit judges of the said circuit next in order of seniority and, if there be none such available, he shall fill any such vacancy or vacancies by designating one or more circuit judges from another circuit or circuits, designating, in each case, the oldest available circuit judge, in order of seniority, in the circuit from which he is selected, such designation to be only with the consent of the senior circuit judge of any such other circuit.

This Act shall apply to every case pending before the Supreme Court of the United States on the date of its enactment.

Section 2 of the Sherman Act of July 2, 1890, c. 647, 26 Stat. 209 (15 U. S. C. 2) provides as follows:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 4 of the Sherman Act, 26 Stat. 209, as amended by the Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167 (15 U. S. C. 4) provides in part as follows:

The several district courts of the United States are hereby invested with jurisdiction to prevent and re-

strain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

STATEMENT

This proceeding grows out of a case brought by the United States against Aluminum Company of America (sometimes hereafter referred to as Alcoa) and other defendants to prevent and restrain violations of the Sherman Act. After a trial of more than two years' duration the District Court dismissed the complaint. An appeal was allowed by this Court, but a quorum of Justices of this Court to hear the case was wanting, four Justices having disqualified themselves. Congress thereupon amended the statute which provided for direct appeal to this Court from the District Courts in anti-trust cases. The amendment became law on June 9, 1944, and pursuant to it this Court certified the case to the Circuit Court of Appeals on June 12, 1944.

The Circuit Court of Appeals in an opinion filed on March 12, 1945, reversed the judgment of the District Court and held that Aluminum Company of America had monopolized and was monopolizing the aluminum ingot market of the United States (at the close of the trial in 1940) in violation of Section 2 of the Sherman Act, 148 F. 2d 416. The Circuit Court of Appeals ordered judgment of monopolization and injunctions; as to the Government's prayer for dissolution the Circuit Court of Appeals committed to the District Court determination of whether Aluminum Company of America should be dissolved and the form of any dissolution, after the agency charged with disposal of the Government's wartime aluminum plants and facilities should have performed its functions. The mandate of the Circuit Court of Appeals remanded the case

to the District Court for proceedings not inconsistent with the opinion. (R. 11.)

On April 23, 1946, the District Court entered its judgment on the mandate. (R. 12-26.) The court retained jurisdiction of the cause until after the Surplus Property Administrator shall have proposed a plan for disposition of the Government owned aluminum facilities, in order that the Attorney General might institute proceedings for the dissolution or partial dissolution of Alcoa or for the enforcement of such plan; "and for the purpose of enabling Aluminum Company to apply to this court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States" (R. 26).

On March 31, 1947, pursuant to the quoted provision, Alcoa filed a petition in the District Court praying that a "final judgment" be entered adjudicating that Aluminum Company of America no longer has a monopoly of the aluminum ingot market of the United States and that, in consequence of the termination of such monopoly, competitive conditions have been restored in the aluminum industry (R. 27-74). The United States first moved unsuccessfully before Judge Caffey to dismiss this petition (R. 75-77). After overruling the motion, Judge Caffey set the question of Alcoa's present status as a monopoly for trial on October 15, 1947 (R. 78-79). The United States on September 11, 1947, filed a petition for a writ of mandamus in the Circuit Court of Appeals for the Second Circuit to require Judge Caffey to execute the mandate of that court by vacating so much of paragraph 12 of the judgment of the District Court "as reserves jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly, and to dismiss the petition of Alcoa," and prayed further for ~~dismissal of Alcoa's petition~~ a stay of the trial proceeding scheduled to commence on October 15, 1947 (R. 1-5).

While any argument of the merits of that application is of course to be avoided in the present proceeding, a description of the writ of mandamus sought is essential for decision of the jurisdictional question raised here.

The basis of the application was that the petition of Alcoa, and the action of the District Court in sustaining it against the Government's objection and setting it for trial, were in conflict with the mandate of the Circuit Court of Appeals in that this would make the right to dissolution depend upon whether Aluminum Company of America presently has a monopoly, instead of depending upon a consideration of the remaining effects of adjudicated monopoly and the need to dissipate them and disable a monopolist, with a history of 28 years of active monopolization, from future monopolization. Additional grounds for granting mandamus were asserted to be that only the United States has standing to bring on proceedings for determination of the need for dissolution, and that the condition precedent fixed by the Circuit Court of Appeals for the District Court's inquiry into the need for dissolution—disposal of the Government's aluminum plants and facilities—has not occurred, inasmuch as the Congressionally approved disposal program is in its incipency and has not been substantially executed (R. 2-5).

The Circuit Court of Appeals dismissed the petition for mandamus upon the ground that it was without further jurisdiction in the cause and that any jurisdiction to enforce its mandate by mandamus was in this Court (R. 322-330).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

In holding that its jurisdiction acquired by certificate of this Court pursuant to Section 29 of Title 15 U. S. C. did not include jurisdiction to issue the writ of mandamus to

require execution of the mandate of the Circuit Court of Appeals in aid of and to support the jurisdiction which that Court has exercised.

ARGUMENT

The Government's primary concern in this case is that there shall be a final determination as to whether this Court or the Circuit Court of Appeals has jurisdiction to pass upon the Government's application for mandamus. Since the Government has no reason to prefer one court as against the other, and since no party is appearing in support of the decision below, we shall endeavor to present the considerations on both sides of the question.

The Circuit Court of Appeals raised the question of its jurisdiction *sua sponte*. It held that both the text and purpose of the 1944 amendment deprived it of jurisdiction of the cause after the expiration of the term at which the original judgment was entered, that a court's power to issue mandamus "exist only as an incident to our jurisdiction to entertain an appeal," and that since future appeals would lie to the Supreme Court jurisdiction to issue the writ incidental to an appeal was lacking.

The 1944 Act provides that if a quorum of this Court is not qualified to hear the case, "the case" shall be certified to the Circuit Court of Appeals, "which court shall thereupon have jurisdiction to hear and determine *the appeal* in such case."

We agree with the court below that this language transfers to that court only jurisdiction to hear the particular appeal, not jurisdiction over subsequent appeals in the case. It is also clear that Congress intended to confine the statute narrowly, inasmuch as the last sentence of the Act provides that "this Act shall apply to every case pending before the Supreme Court of the United States on the date of its

enactment," thus manifesting an intention that the Act not apply beyond the immediate necessities of the situation existing at that time. Furthermore, the 1944 amendment was an exception to the general statute vesting in this Court jurisdiction over appeals in antitrust equity cases, a provision which wisely acknowledged the importance of this class of cases and the desirability of having them reviewed uniformly and expeditiously in this Court without the necessity of an intermediate appeal. The court below, therefore, properly recognized that the purpose of the statute was not to limit the jurisdiction of this Court over such appeals to any greater extent than was required by the inability of this Court to act because of the absence of a quorum.

We do not think it necessarily follows, however, that because jurisdiction of the Circuit Court of Appeals was narrowly limited to the appeal before it, it lost the power to enforce its mandate. This question has two facets: (1) The intention of Congress in 1944 when it gave the Circuit Court of Appeals jurisdiction over "the appeal," and (2) whether a court's jurisdiction to enforce its mandate is dependent upon its possible jurisdiction over a future appeal in the cause.

1. Nothing in the statute or its history sheds specific light on the question whether the authority granted to the Circuit Court of Appeals included authority to enforce the mandate. The intention of Congress, as we have seen, was to allow only a narrow exception to the general scheme for direct appeal to the Supreme Court.

The precise issue, as we see it, is whether Congress would have regarded a proceeding to enforce the judgment entered by the Circuit Court of Appeals as an integral part of the original appeal transferred to that court, or as a new ap-

peal. The Government brought its petition for mandamus to the Circuit Court of Appeals because it thought enforcement of the mandate a part of the original appellate proceeding. The statute provides for transfer of the appeal to "the circuit court of appeals." We think this indicates that Congress meant the court to which the appeal was certified to function with the usual powers of a circuit court of appeals. This includes the power to see that its mandate is enforced, by mandamus if necessary. *Delaware, Lackawanna & Western R. Co. v. Rellstab*, 276 U. S. 1; *Morris v. Securities and Exchange Commission*, 116 F. 2d 896 (C. C. A. 2); *S. S. Kresge Co. v. Winget Kickernick Co.*, 102 F. 2d 740 (C. C. A. 8). Indeed, the power to enter a final judgment would be ineffective if power to see that the lower court complied with the judgment were not so conferred. An appellate jurisdiction, once invoked and exercised, is not exhausted until the mandate is transformed from a thing of words into an instrumentality effecting the purposes of the appellate court.

We think it unlikely that the Congress which enacted the 1944 amendment would have intended the Circuit Court of Appeals to have less authority than federal appellate courts generally to enforce their judgments—even though it would not have jurisdiction over a subsequent appeal in the case unless this Court again lacked a quorum.

2. We think the court below erred in suggesting that power to enforce a judgment rests solely on a court's future appellate jurisdiction. Although the authority to issue such extraordinary writs as "may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law" (Judicial Code, Section 262, 28 U. S. C. 377) often may depend upon the existence of a future appellate jurisdiction, that is

not necessarily the case. When a proceeding has not yet reached an appellate stage, the appellate court's authority to issue a writ normally will rest upon its ultimate power to control the final disposition of the case on a future appeal, or on the need for protecting this final authority. See *Ex parte United States*, 287 U. S. 241, and cases cited. But that is not the basis for an appellate court's authority to enforce a judgment already rendered. In such cases an appellate court must have jurisdiction to require the lower court to obey its mandate if the ultimate authority of the appellate tribunal is to prevail, irrespective of whether there can be a subsequent appeal.

Thus *In re Washington & Georgetown Railroad Co.*, 140 U. S. 91, where the lower court allowed interest on a judgment in violation of the mandate of this Court, and the amount of the interest was too small to be the subject of a new writ of error from this Court, mandamus was granted. The propriety of mandamus under such circumstances was again recognized in *City Bank of Fort Worth v. Hunter*; 152 U. S. 512. We take these decisions to mean that in the exercise of a court's appellate authority, mandamus will issue although there can be no future appellate review, and therefore that it issues to support the past exercise of jurisdiction by the court. That a circuit court of appeals may grant mandamus in aid of a past exercise of jurisdiction is indicated in *Delaware, Lackawanna and Western Railroad Company v. Rellstab*, 276 U. S. 1. Additional support is to be found in: *Sibbald v. United States*, 12 Pet. 488; *Heine v. Levee Commissioners*, 19 Wall. 655, 660; *Virginia v. Rives*, 100 U. S. 313, 316, 323, 327, 329; *Labette County Commissioners v. Moulton*, 112 U. S. 217; *In re Sanford Fork & Tool Co.*, 160 U. S. 247, 255; *United States v. Terminal R. R. Ass'n*, 236 U. S. 194,

199; *Baltimore & Ohio Railroad Co. v. United States*, 279 U. S. 781; *Ex Parte Krentler-Arnold Hinge Last Co.*, 286 U. S. 533; *Ex Parte Texas*, 315 U. S. 8.

We have found no decision of a federal court denying mandamus to compel compliance with an appellate mandate upon the ground that the court had no future appellate jurisdiction. While there are expressions in cases not involving appellate mandates that mandamus "can only be granted in aid of an existing jurisdiction" (*Chickaming v. Carpenter*, 106 U. S. 663, 665); that "if there is no appeal pending here and be no appeal, we are wholly without authority to issue a writ of mandamus" (*Mutual Life Insurance Co. v. Holly*, 135 F. (2d) 675, 676 (C. C. A. 7)); and that the true test of appellate jurisdiction to grant mandamus is the existence of a right to review "and not the prior exercise of that right by appeal or by writ of error" (*Barber Asphalt Paving Co. v. Morris*, 132 Fed. 945, 955 (C. C. A. 8)), these were general observations in the course of decisions not concerned with the enforcement of a prior appellate mandate.

For the above reasons we submit that the jurisdiction vested in the Circuit Court of Appeals by the 1933 amendment includes the power to enforce its mandate irrespective of its lack of future appellate jurisdiction over the case.

The last paragraph of the opinion below suggests that the court below did not regard as an absolute bar to mandamus the principles which the earlier portions of the opinion seem to approve. The paragraph indicates that the importance of the issue raised by the Government's petition for mandamus in relation to the problem of subsequent dissolution served to tie the proceeding more closely to the issue of dissolution which would eventually come before this Court on appeal than to the original

judgment, which left undetermined the issue of dissolution. The Government's petition, however, was intended to prevent the District Court from passing on the question of monopoly, which the Circuit Court of Appeals had adjudicated, not dissolution—although the Government's motive was, of course, to prevent a determination which would impair the ultimate decision on the question of dissolution left open by the judgment.

Furthermore, although the original judgment of the Circuit Court of Appeals did not determine the issue of dissolution, it did require the District Court to "wait" (R. 11) the action of the Government's surplus property disposal agency in disposing of its aluminum properties.

We have some difficulty in seeing why the court below has less authority to enforce compliance with its mandate on these questions than on any others. The court's reluctance to decide a matter which was important largely because of its effect upon a future dissolution proceeding seems to be in large part a manifestation of the court's interpretation of the 1944 statute as creating as narrow an exception as possible to this Court's normal appellate jurisdiction on the case. This is a very uncertain criterion for determining what aspects of its judgment the court below has authority to enforce. It is important that the parties to this case not be left in continued doubt as to

the appellate court in which future proceedings for the enforcement of the judgment herein should be taken.¹

Respectfully submitted.

PHILIP B. PERLMAN,

Solicitor General.

JOHN F. SONNETT,

Assistant Attorney General.

LEONARD J. EMMERGLICK,

ROBERT L. STERN,

Special Assistants to the Attorney General.

MARCH, 1948.

¹ Although Judge Caffey resigned on October 31, 1947 (after the Circuit Court of Appeals denied the application for mandamus), Judge Caffey's orders are the law of the District Court and must be followed by any judge designated to succeed Judge Caffey in the case, according to the rule and practice prevailing in the Second Circuit. *Commercial Union of America, Inc. v. Anglo-South American Bank, Ltd.*, 10 F. 2d 937 (C. C. A. 2); *In re Hines*, 88 F. 2d 423 (C. C. A. 2); *United States v. Steinberg*, 100 F. 2d 124 (C. C. A. 2); *Farmers' Loan and Trust Co. v. Miller*, 298 Fed. 758 (S. D. N. Y.); *Aachen & Munich Fire Insurance Co. v. Guaranty Trust Co.*, 24 F. 2d 465 (S. D. N. Y.).

Out of an abundance of caution the Government applied to the Senior Judge of the District Court for assignment of the case to another judge for the expressed purpose of enabling the Government, before applying for relief in this Court, to seek from the succeeding judge determination of whether Judge Caffey's orders would be reconsidered or, on the other hand, confirmed. The Senior Judge, declining so to assign the case, confirmed the practice of the court to be as stated. The transcript of the proceeding before the Senior Judge is printed at pp. 58-64 of the Government's petition for mandamus in No. 303, Misc., this Term. That the writ of mandamus ultimately sought may be addressed to the inferior court as such is stated in *Virginia v. Rives*, 100 U. S. 313, 328.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, THE
HONORABLE FRANCIS G. CAFFEY, Judge of
the United States District Court for the Southern
District of New York, and ALUMINUM COMPANY
OF AMERICA, a Corporation, Respondents.

**BRIEF OF ALUMINUM COMPANY OF AMERICA
IN SUPPORT OF THE ISSUANCE OF A WRIT
OF CERTIORARI.**

WILLIAM WATSON SMITH

FRANK B. INGERSOLL

LEON E. HICKMAN

1025 Union Trust Building
Pittsburgh, Pennsylvania

CHARLES E. HUGHES, JR.

L. HOMER SURBECK

One Wall Street
New York, New York

*Counsel for Respondent,
Aluminum Company of America*

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,

v.

*UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, THE HONORABLE FRANCIS G. CAFFEY, Judge of the United States District Court for the Southern District of New York, and ALUMINUM COMPANY OF AMERICA, a Corporation, Respondents.

**BRIEF OF ALUMINUM COMPANY OF AMERICA
IN SUPPORT OF THE ISSUANCE OF A WRIT
OF CERTIORARI.**

Aluminum Company of America (hereinafter identified as "Alcoa") respectfully joins in the request that

* The United States District Court for the Southern District of New York is listed as an additional respondent in the petition, but this is an inadvertence. The caption of the record as well as the motion in the Circuit Court of Appeals for writ of mandamus (R. 1) shows that Judge Caffey, but not the Court, was named as respondent. Alcoa intervened on leave granted (R. 336). No one has moved to add the District Court as a third respondent. We do not suggest the lack of a proper party, for Judge Caffey is still a member of the Court although in retired status and there appears to be no doubt that

a writ of certiorari issue in this case, on the ground that the Circuit Court of Appeals had jurisdiction to pass upon the merits of the motion for a writ of mandamus filed in that Court.

The Circuit Court of Appeals denied petitioner's motion for a writ of mandamus for lack of jurisdiction to entertain it (R. 358). We agree with the Government (certiorari petition, pp. 11-12) that the Circuit Court of Appeals was in error in so ruling, and that it had jurisdiction to decide the petition for mandamus (R. 1) upon its merits.

The petition for mandamus was based upon the asserted (and disputed) premise that the District Court was not carrying out the Circuit Court of Appeals mandate of March 28, 1945, and that the writ should issue in aid of this outstanding and only partially executed order of the Circuit Court of Appeals. Like the petitioner, we are persuaded that the appellate court was being asked to issue a writ of mandamus claimed to be in aid of its *past* appellate jurisdiction, which it had exercised in its opinion (148 F. 2d 416) and mandate (R. 15) of March 12 and 28, 1945.

The power of the Circuit Court of Appeals to entertain a petition for mandamus to protect its appellate jurisdiction (Judicial Code, §262, 28 U. S. C. §377) relates not only to *future* but also to *past* jurisdiction:

his rulings are the law of the case. We mention the matter only because we feel that the District Court should not be treated in this summary manner. The inclusion of the District Court as a respondent in the recently filed motion for leave to file a mandamus petition in this Court (No. 303 Miscellaneous) has no counter-part in this case.

Delaware, Lackawanna & Western Railroad Company v. Reelstab, 276 U. S. 1 (1928, opinion by Mr. Justice Holmes).

Under the so-called Weaver act of June 9, 1944, c. 239, 58 Stat. 272, 15 U. S. C., §29, this Court was directed to certify to the appropriate Circuit Court of Appeals any case coming before it under the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823, 15 U. S. C. §29, with respect to which a quorum of Justices was lacking in this Court. Such a certificate issued to the Circuit Court of Appeals for the Second Circuit in the case of *United States v. Aluminum Company of America et al.*, theretofore pending in this Court on a special docket at No. 2 October Term, 1943. Proceeding pursuant to the certificate, jurisdiction was exercised by the Circuit Court of Appeals (148 F. 2d 416); and as an attribute of that jurisdiction it has the power conferred upon it by §262 of the Judicial Code (28 U. S. C. §377) to protect and enforce the jurisdiction which it has already exercised. Under this *past* jurisdiction, the Circuit Court of Appeals decided all the issues between the plaintiff and Alcoa and as to the remedy, if any, deferred decision until after disposal of the Government-owned aluminum plants.

The Department's petition for the writ of mandamus is in aid of the appellate jurisdiction of the Circuit Court of Appeals which culminated in its mandate of March 28, 1945. The petition does not predicate jurisdiction on the *future* appellate jurisdiction of the Circuit Court of Appeals or of this Court. It could not, for nothing has been done that interferes with a full appellate review. For this reason we do not believe that the construction of the act of 1944 was properly before the Circuit Court of Appeals; nor do we believe that the inter-

pretation of this statute is involved in a review of that ruling on certiorari.

If jurisdiction to hear the motion for mandamus filed in the Circuit Court of Appeals depended in any way on the jurisdiction of that Court over a future appeal from the District Court with respect to matters remitted to it under the outstanding Circuit Court of Appeals mandate (R. 15), we should take the position that jurisdiction to hear the appeal vested in the Circuit Court of Appeals under the 1944 statute and the outstanding certificate of this Court. We do not believe that it was the intention of Congress to have this case shifted back and forth between two appellate courts. The inherent unworkability of having one segment of an anti-trust case passed upon with finality by one court and the balance by another, with neither free to review the other, makes such a construction quite improbable. However, there is no occasion to detail our position on that question of statutory construction until it arises.

It matters not to the jurisdiction of the Circuit Court of Appeals to entertain the pending petition for mandamus, whether the next appeal from the District Court lies to it or to this Court. That question is not raised on this record; and if it were, it could not be answered—regardless of the interpretation placed upon the so-called Weaver act—until the case was ripe for appeal, for only then will we know whether there is at that time on this Court a quorum of Justices qualified to hear the appeal. If not, appeal will plainly be to the Circuit Court of Appeals; while if a quorum then exists, the Weaver act must then be construed in order to determine which appellate court has jurisdiction. The statute need not be construed now; indeed it should not be, for there is nothing in the record to raise the issue.

Even if it be assumed that any further appeal from the District Court will lie only to this Court, the right of the Circuit Court of Appeals to entertain a petition for mandamus in aid of its *past* jurisdiction is clearly demonstrated by *Delaware, Lackawanna & Western Railroad Company v. Rellstab*, *supra*, 276 U. S. 1. In that case a judgment for the defendant in a personal injury case was affirmed by the Circuit Court of Appeals for the Third Circuit, but subsequently vacated by the District Court because of an affidavit by a witness confessing perjury. Thereupon the defendant petitioned the Circuit Court of Appeals for a writ of mandamus to require the District Court to reinstate the judgment which the Circuit Court of Appeals had previously affirmed. The Circuit Court of Appeals dismissed the petition for lack of jurisdiction, predicated upon the reasoning that if the judgment were reinstated no further appeal could be taken to the Circuit Court of Appeals with respect to it, and therefore the relief requested by mandamus could not be in aid of appellate jurisdiction. In short, the Circuit Court of Appeals held that, having no *future* appellate jurisdiction with respect to the judgment, it could not issue a writ of mandamus in support of its *past* jurisdiction. This decision was reversed by this Court, which ruled that the jurisdiction to issue a writ of mandamus existed to protect the appellate jurisdiction of the Circuit Court of Appeals which had previously been exercised. Mr. Justice Holmes, speaking for this Court, stated (p. 5):

"As the [District] Court was without jurisdiction to vacate the judgment [the term having expired], mandamus is the appropriate remedy unless to grant that writ is beyond the power of the Circuit Court of Appeals. * * * We perceive no reason to

doubt the power of that Court. It had affirmed the judgment of the Court below. * * * Like other appellate courts * * * the Circuit Court of Appeals has power to require its judgment to be enforced as against any obstruction that the lower Court, exceeding its jurisdiction, may interpose. * * * The issue of a mandamus is closely enough connected with the appellate power."

Having jurisdiction to enforce compliance with its outstanding mandate, the Circuit Court of Appeals should have decided the Government's motion for a mandamus upon the merits of the Department's contention that the District Court was not following the mandate.

We do not mean to imply any agreement with the Department on the merits of its claim that the District Court is not following the mandate. Indeed we think that it is perfectly clear that the trial court has faithfully carried out appellate instructions.

We deprecate the action of the Department in incorporating by reference into its petition for certiorari (at p. 8) its petition for mandamus and supporting brief filed concurrently in this Court at No. 303 Miscellaneous. These are detailed arguments on the merits of its motion for mandamus. We disagree with most of the assertions of fact and contentions of law thus incorporated. We could easily answer them, as we did in the Circuit Court of Appeals, but it is obviously inappropriate to discuss the merits at this time.

This proceeding for certiorari and the motion for leave to file a petition for mandamus in this Court at No. 303 Miscellaneous are inconsistent with each other. If one court has jurisdiction, the other has not.

Summary.

It is submitted, with deference, that the Circuit Court of Appeals so clearly had jurisdiction to rule the Government's petition for mandamus upon the merits of the contention that the District Court was proceeding in violation of the appellate mandate that it would be appropriate for this Court to issue a writ of certiorari and concurrently remand the case to the Circuit Court of Appeals for decision on the merits; and at the same time refuse the motion for permission to file a new petition for mandamus in this Court at No. 303 Miscellaneous. This appears to have been the disposition made in the comparable case of *Ex parte United States*, 319 U. S. 730 (1943, opinion per curiam).

Respectfully submitted,

WILLIAM WATSON SMITH

FRANK B. INGERSOLL

LEON E. HICKMAN

1025 Union Trust Building
Pittsburgh, Pennsylvania

CHARLES E. HUGHES, JR.

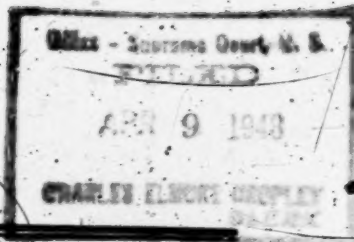
L. HOMER SURBECK

One Wall Street
New York, New York

*Counsel for Aluminum
Company of America,
Respondent.*

February 4, 1947.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,
v.

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, THE
HONORABLE FRANCIS G. CAFFEY, Judge of the
United States District Court for the Southern Dis-
trict of New York, and ALUMINUM COMPANY OF
AMERICA, a corporation, Respondents.**

**On Writ of Certiorari to the United States Circuit Court
of Appeals for the Second Circuit.**

**BRIEF ON BEHALF OF ALUMINUM COMPANY
OF AMERICA**

**WILLIAM WATSON SMITH
FRANK B. INGERSOLL
LEON E. HICKMAN
1025 Union Trust Building
Pittsburgh, Pennsylvania
CHARLES E. HUGHES, JR.
L. HOMER SURRECK
One Wall Street
New York, New York**

***Counsel for Respondent,
Aluminum Company of America***

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,

v.

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, THE
HONORABLE FRANCIS G. CAFFEY, Judge of the
United States District Court for the Southern Dis-
trict of New York, and ALUMINUM COMPANY OF
AMERICA, a corporation, Respondents.**

**On Writ of Certiorari to the United States Circuit Court
of Appeals for the Second Circuit.**

**BRIEF ON BEHALF OF ALUMINUM COMPANY
OF AMERICA**

PREVIOUS OPINIONS AND ORDERS.

The opinion of the Circuit Court of Appeals (R. 323-327), denying its jurisdiction to entertain the petition for a writ of mandamus, is reported in 164 F. 2d 159. The earlier opinion of that court, ruling upon the merits of the anti-trust charges, is reported in 148 F. 2d 416. It partially affirmed and partially reversed the rulings of the District Court which are reported in 44 F. Supp. 97.

JURISDICTION.

The postponement of proceedings in this Court because of the absence of a quorum of Justices qualified to hear the case is reported in 320 U.S. 708; and the certification and transfer of the cause to the Circuit Court of Appeals in 322 U.S. 716. The petitioner has petitioned this Court at No. 303 Miscellaneous, October Term, 1947, for leave to file a motion for a writ of mandamus substantially identical with the petition for mandamus filed in the Circuit Court of Appeals (R. 1). No ruling on the petition has been announced.

JURISDICTION.

Certiorari was granted by this Court on March 8, 1948, pursuant to jurisdiction conferred upon it by Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. §347.

The jurisdiction of the Circuit Court of Appeals is derived from the Act of June 9, 1944, c. 239, 58 Stat. 272 (quoted in full, *supra*, pp. 27-28, and hereinafter sometimes referred to as the Act of 1944) amending Section 2 of the so-called Expediting Act of February 11, 1903, c. 544, 32 Stat. 823, 15 U.S.C. § 29. Its ancillary jurisdiction in mandamus is conferred by Section 262 of the Judicial Code, 28 U.S.C. § 377.

QUESTION PRESENTED.

After a cause has been certified and transferred to a Circuit Court of Appeals pursuant to the Act of June 9, 1944, and the Circuit Court of Appeals has heard an appeal, partially determined the issues certified and transferred to it, reversed the judgment, and remanded the cause for further proceedings not inconsistent with its decision, does the Circuit Court of Appeals have jurisdiction to hear and determine on the merits a petition for mandamus directing the District Court to execute its mandate?

No question is presented concerning the merits of the petitioner's motions for mandamus either in the Circuit Court of Appeals or this Court. Neither is any question before the Court concerning any ruling made by the Circuit Court of Appeals or the District Court on the merits of the anti-trust issues which underlie this case.

COUNTER-STATEMENT.

We believe that the limited jurisdictional issue now before this Court can be brought into better focus if a few words are added to the petitioner's statement.

On April 23, 1937, nearly eleven years ago, the Department of Justice filed a 103 paragraph petition in the District Court for the Southern District of New York, charging Aluminum Company of America (referred to throughout the litigation, and herein, as "Alcoa") and certain individual defendants with innumerable violations of the Sherman Act with respect to both monopolization and restraint of almost every aspect of the aluminum industry. Among other things, Alcoa was charged with monopolization of interstate commerce in no less than sixteen markets and commodities, namely, bauxite, alumina, water power, aluminum ingot, aluminum cooking utensils, aluminum cable, aluminum sand castings, aluminum die castings, aluminum permanent mold castings, aluminum bronze powder, aluminum foil, aluminum extrusions, aluminum pistons, aluminum structural shapes, aluminum sheet, and hard aluminum alloys. Comprehensive charges were added concerning conspiracies with foreign producers in restraint of trade in the foregoing commodities. The Department sought the dissolution of Alcoa and other relief.

Alcoa denied the charges. On June 1, 1938, trial began before Judge Francis G. Caffey and continued until August 14, 1940, twenty-six months without interruption except for summer vacations in 1938 and 1939. The record approximates 58,000 pages. On September 30, 1941, and for nine days thereafter, Judge Caffey delivered his opinion from the bench. He decided all issues involving Alcoa in its favor (44 F. Supp. 97).

Final appellate review was vested in the Circuit Court of Appeals for the Second Circuit under the Act of 1944 due to the absence of a quorum here (320 U.S. 708; 322 U.S. 716).

Such final appellate review by the Circuit Court of Appeals resulted in an affirmance of the District Court on all issues except monopolization of the aluminum ingot market to August 14, 1940. With respect to this issue the cause was remanded to the District Court for further proceedings to determine the necessity for relief in the light of the competitive effect of (1) the aluminum ingot plants built by Reynolds Metal Company since the trial, and (2) the post-war disposal of the war-built aluminum plants owned by the United States Government. The Circuit Court of Appeals was careful not to prejudge the necessity for or the nature of any relief that might be required (148 F. 2d 416, 432, 445-447).

One would suppose from reading page 6 of the brief of the Department of Justice that there were "remaining effects" of the 1940 ingot monopoly which should be dissipated and required some action to "disable" the monopolist. *But that is the very question that the Circuit Court of Appeals said could not and must not be determined until after the disposal of the Government aluminum plants following the war.*

In its opinion (148 F. 2d 416), the Circuit Court of Appeals adjudicated every issue certified and transferred to it except only the ultimate and decisive issue of what relief, if any, should be granted with respect to the ingot monopoly of 1940. Upon that question the Court said (p. 432):

"* * * conditions have so changed since the case was closed, that, as will appear, it by no means fol-

lows, because 'Alcoa' had a monopoly in 1940, that it will have one when final judgment is entered after the war. That judgment may leave it intact as a competing unit among other competing units, * * *"

The Court added (p. 445):

"Nearly five years have passed since the evidence was closed; during that time the aluminum industry, like most other industries, has been revolutionized by the nation's efforts in a great crisis."

The Court said further (p. 446):

"* * * It is as idle for the plaintiff to assume that dissolution will be proper, as it is for 'Alcoa' to assume that it will not be; and it would be particularly fatuous to prepare a plan now, even if we could be sure that eventually some form of dissolution will be proper. Dissolution is not a penalty but a remedy; if the industry will not need it for its protection, it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency. The need for such a remedy will be for the district court in the first instance, * * *"

Again (p. 447):

"Conceivably 'Alcoa' might be left as it was; perhaps it might have to be dissolved; if dissolved, the dissolution would depend upon how the other plants were distributed."

And more recently (164 F. 2d 159, 162):

"* * * our mandate left undecided the most substantial issue of all: i.e. dissolution; * * * and

the outcome was not even foreshadowed in what we decided."

The petitioner's assertion (brief, p. 6, paraphrasing its petition for mandamus) that "the Congressionally approved disposal program is in its incipency and has not been substantially executed (R. 3-6)" is directly contrary to the averments of Alcoa's petition filed on March 31, 1947 (R. 27). This is a disputed issue of fact that the District Court was scheduled to hear and decide when the mandamus petition was interposed. The question of whether or not Alcoa's petition is premature cannot be determined except upon the evidence to be adduced at the hearing on that petition. On this point Judge Caffey, in his opinion filed May 28, 1947 (R. 79), said:

"Whether the petition has been filed prematurely, as urged by the plaintiff, cannot be satisfactorily determined from a mere consideration of the petition itself and the arguments advanced pro and con. This can be decided only upon the evidence adduced at the hearing as to presently existing conditions."

We agree with the petitioner (brief, p. 6) that any argument on the merits of the mandamus action is to be avoided in the present proceeding, yet the petitioner's description of its position in the mandamus case (brief, p. 6) is necessarily the statement of an argumentative and disputed position. We caution, purely as an anti-toxin, that the correctness of each of the petitioner's contentions in the mandamus case is disputed and will be challenged at the appropriate time. Nor do we believe them to be a correct statement of the proceedings that have been initiated in the District Court; and the trial court has so held (R. 78-79).

ARGUMENT.**Summary.**

1. The Circuit Court of Appeals had jurisdiction to issue a writ of mandamus in aid of its outstanding mandate, regardless of whether it had any future appellate jurisdiction in this case: *Delaware, Lackawanna and Western R. Co. v. Reelstab*, 276 U.S. 1 (1928, opinion by Mr. Justice Holmes)..

2. Nothing before this Court calls for a ruling as to where future appellate jurisdiction is vested. To decide that issue at this time on the basis of deliberate dicta might well prejudice an orderly review when such an issue is unavoidably presented.

3. The Circuit Court of Appeals and the petitioner have both expressed the opinion that future appellate jurisdiction is in this Court rather than in the Circuit Court of Appeals. We believe the contrary because

(a) The Circuit Court of Appeals has not yet heard and determined either the appeal or the case certified to it;

(b) The statute evidences an intention to create a panel of some permanence within the Circuit Court of Appeals; and

(c) The statutory direction that there shall be no review of the decision of the Circuit Court of Appeals by appeal or certiorari or otherwise strongly suggests that Congress did not intend the case to revert to this Court.

However, we do not believe this issue to be before this Court for decision.

1. The Circuit Court of Appeals Has Jurisdiction in Mandamus as a Means of Enforcing Its Outstanding Mandate.

Like the petitioner, we believe that the Circuit Court of Appeals had jurisdiction to decide petitioner's petition for mandamus.

The issue of lack of jurisdiction was raised by the Circuit Court of Appeals *sua sponte*. Until the decision, we should have supposed that it was free from doubt that a circuit court of appeals had jurisdiction under Section 262 of the Judicial Code, 28 U.S.C. § 377, to issue a writ of mandamus in aid of an outstanding mandate, regardless of any future appellate jurisdiction in the cause. Both the Judicial Code and decisions of this Court, a number of which are cited in the petitioner's brief (pp. 9-11), would seem to confirm such jurisdiction beyond doubt.

Delaware, Lackawanna and Western R. Co. v. Reelstab, 276 U.S. 1, is to us a definitive ruling that such jurisdiction is vested in the Circuit Courts of Appeals. In the *Lackawanna* case a judgment for a defendant in a personal injury case was affirmed by the Circuit Court of Appeals for the Third Circuit, but subsequently vacated by the District Court on the basis of an affidavit by a witness confessing perjury. Thereupon the defendant petitioned the Circuit Court of Appeals for a writ of mandamus to require the District Court to reinstate the judgment which the Circuit Court of Appeals had previously affirmed. The Circuit Court of Appeals dismissed the mandamus petition for lack of jurisdiction, predicated upon the reasoning that if the judgment

10 C. C. A. HAS JURISDICTION TO ENFORCE MANDATE.

were reinstated no further appeal could be taken to the Circuit Court of Appeals with respect to it. This was treated by the Court as a demonstration that jurisdiction in mandamus did not exist because the mandamus could not be said to be in aid of a future appellate jurisdiction. In short, the Circuit Court of Appeals for the Third Circuit—like the Circuit Court of Appeals in the present case—held that, having no future appellate jurisdiction with respect to the judgment, it could not issue a writ of mandamus in support of the mandate issued by it on the prior appeal. This Court reversed, ruling that jurisdiction in mandamus existed to protect the earlier appellate jurisdiction of the Circuit Court of Appeals. It was here ruled (p. 5):

"As the [District] Court was without jurisdiction to vacate the judgment [the term having expired], mandamus is the appropriate remedy unless to grant that writ is beyond the power of the Circuit Court of Appeals. * * * We perceive no reason to doubt the power of that Court. It had affirmed the judgment of the Court below. * * * Like other appellate courts * * * the Circuit Court of Appeals has power to require its judgment to be enforced as against any obstruction that the lower Court, exceeding its jurisdiction, may interpose. * * * The issue of a mandamus is closely enough connected with the appellate power."

Like the petitioner (brief, pp. 11-13), we do not believe that the principle established in the *Lackawanna* case ceases to be applicable to an alleged deviation from the mandate if that departure is of importance, even "high, perhaps critical, importance", as the Circuit

Court of Appeals phrased it (R. 327; 164 F. 2d. 159, 162). Indeed, the more important the departure from the mandate (a challenged premise), the more urgent the obligation upon the court issuing it to exercise its ancillary jurisdiction in mandamus to protect its outstanding order.

We have found no case which denies to an appellate court jurisdiction to issue mandamus as ancillary to an appellate jurisdiction which it has already exercised. The cases cited by the petitioner at page 11 of its brief clearly do not deny this ancillary jurisdiction to a Circuit Court of Appeals. *Chickaming v. Carpenter*, 106 U. S. 663 (1882, opinion by Mr. Chief Justice Waite), concerned mandamus as an execution process and did not involve an appellate mandate. *Mutual Life Insurance Co. of New York v. Holly*, 135 F. 2d 675 (C. C. A. 7, 1943, opinion per Curiam), was a case where there was no appellate jurisdiction, either past or future. *Barber Asphalt Paving Co. v. Morris*, 132 Fed. 945 (C. C. A. 8, 1904, opinion by Judge Sanborn), was concerned only with whether the pendency of an appellate proceeding was necessary to establish jurisdiction in mandamus and reached the conclusion that it was not. In citing this case in *Ex parte United States*, 287 U. S. 241, 246 (1932, opinion by Mr. Justice Sutherland), this Court recognized that there was power to issue the writ of mandamus in aid of jurisdiction already obtained, as well as power to issue it to correct unauthorized action of the court below, which might otherwise defeat future appellate jurisdiction.

Having jurisdiction to enforce compliance with its outstanding mandate, it seems clear to us that the Circuit Court of Appeals for the Second Circuit should have

12. FUTURE APPELLATE JURISDICTION NOT AN ISSUE.

decided the petitioner's motion for a mandamus upon the merits of the contention advanced by the Department of Justice that the District Court was not following the mandate of March 28, 1945. This is true even if it be assumed that any further appeal from the District Court will lie only to this Court.

We do not mean to imply any agreement with the petitioner on the merits of its claim that the District Court is not following the mandate. Indeed, we think it perfectly clear that the trial court has faithfully carried out appellate instructions. But that is an argument for another day.

2. Nothing Before this Court Calls for a Ruling as to Where Future Appellate Jurisdiction is Vested.

The petition for mandamus (R. 1) purports to be in aid of the appellate jurisdiction of the Circuit Court of Appeals which culminated in its mandate of March 28, 1945. Inasmuch, as the jurisdiction of that court to entertain such a petition to enforce compliance with its outstanding mandate does not depend on the existence of a future appellate jurisdiction, there is no occasion to determine whether it has such a jurisdiction.

The petition for the writ does not predicate jurisdiction on the future appellate jurisdiction of the Circuit Court of Appeals. It could not, for nothing has been done which interferes with a full appellate review of anything done by the District Court. The District Court has done nothing to date but set a time for the trial of an issue which we believe to be within the terms of the mandate and the petitioner does not. Conse-

quently, it matters not to the jurisdiction of the Circuit Court of Appeals to entertain the pending petition for mandamus, whether the ultimate appeal from the District Court lies to the Circuit Court of Appeals or to this Court.

The question of future appellate jurisdiction is not raised on this record; and it cannot be answered—regardless of the interpretation placed upon the Act of 1944—until there is an issue ripe for appeal. Only then will we know whether there is at that time in this Court a quorum of Justices qualified to hear such an appeal. Today there is a bare quorum. In the absence of a quorum here, there could be no appellate review unless the Act of 1944 were construed to confer jurisdiction on the Circuit Court of Appeals. If a quorum does exist, then it will be important to know the nature of the proceeding, and the issue that is being appealed from the District Court, in order to determine whether it is within or beyond the scope of the cause already certified and transferred to the Circuit Court of Appeals.

We recognize that it is not necessary to urge this Court not to construe the Act of 1944 in advance of an issue with respect to it. For many years it has been the rule here that this Court should express no opinion concerning the construction of a statute which it does not believe to be necessarily involved in the adjudication of the case before it, even though the lower court may have felt differently and may have placed a construction upon such statute: *Sullivan v. Iron Silver Mining Co.*, 109 U.S. 550, 554 (1883, opinion by Mr. Justice Gray).

Nevertheless, we feel obligated to place before the Court our construction of the Act of 1944, because the Circuit Court of Appeals has done so (R. 324-326; 164 F. 2d 159, 161-162) and the petitioner (although proceeding on a line of reasoning that makes any construction of the statute quite irrelevant) has indulged in some concurring dicta (brief, pp. 7-8).

With all deference, we do not believe that the Circuit Court of Appeals and the petitioner have correctly construed the statute.

3. The Proper Construction of the 1944 Amendment.

(a) *The scope of the certificate.* It will be noted initially that this Court certified and transferred "the cause" to the Circuit Court of Appeals (322 U.S. 716; quoted in full, *infra*, p. 32). This is in harmony with the wording of the statute which repeatedly refers to "the case"—not the appeal—as the object of the certification. (See appendix 1, pp. 27-28, *infra*.)

A reading of the decision of the Circuit Court of Appeals in the case certified to it (148 F. 2d 416), or of the underlying ruling of the trial court (44 F. Supp. 97), makes it perfectly clear that "the case" or "cause" which was appealed to this Court, and then certified and transferred to the Circuit Court of Appeals for final decision, involved every issue that was litigated in twenty-six months of trial, including countless charges of monopolization and restraint as well as the rulings on relief. Those issues—all of them—were certified and transferred to the Circuit Court of Appeals for final decision, 322 U.S. 716.

Later, in denying its jurisdiction in mandamus, the Circuit Court of Appeals sought to narrow the apparent scope of the statute by asserting that it was limited to a decision of "the appeal" (R. 325; 164 F. 2d 159, 161). An examination of the statute reveals that these words, in context, cannot easily be given such a limiting effect. Following the direction that "the case" be certified to the Circuit Court of Appeals, the statute confers jurisdiction "to hear *and determine* the appeal in such case" (see underscored wording in appendix 1, *infra* pp. 27-28).

Far from limiting the jurisdiction of the Circuit Court of Appeals to whatever portion of the case it elects to decide at a single hearing, the Court is granted jurisdiction and twice given directions "to hear *and determine*" the appeal in such case, and once "to hear *and determine*" the case. We submit that jurisdiction is not exhausted—indeed, the duty imposed upon the Court has not been fulfilled—until the Circuit Court of Appeals has determined every issue referred to it by the certification and transfer of the cause. This the Circuit Court of Appeals has not done, for it has remanded to the District Court for further consideration the necessity for relief from the aluminum ingot monopoly which existed until August 14, 1940, but which we maintain has been terminated by war-time and post-war developments (148 F. 2d 416, 432, 445-7). In the later words of the Court (R. 326; 164 F. 2d 159, 162):

" * * * our mandate left undecided the most substantial issue of all: i.e. dissolution; * * * "

That issue was the most important part of the cause certified by this Court to the Circuit Court of Appeals, and until it has been decided there would seem

to be little basis for an argument that jurisdiction has been exhausted.

The Circuit Court of Appeals assumed that this Court could return the case to it by a second certificate (R. 325, 326; 164 F. 2d 159, 161, 162). This must be on the premise that this Court would then have before it the same case that was on the docket of this Court on June 9, 1944, for it can only certify such cases (*infra*, p. 28, lines 47-49). This premise is a concession that the jurisdiction conferred by the Act of 1944 has not been exhausted because the case which was on the docket of this Court on June 9, 1944—and thereafter certified and transferred—has not yet been "heard and determined."

(b) *The meaning of the last sentence.* The petitioner's comments on the Act of 1944 (brief pp. 7-8) are predicated primarily upon the implications which it reads into the last sentence of the statute, limiting the Act, "to every case pending before the Supreme Court of the United States on the date of its enactment" (*infra*, p. 28, lines 47-49). This, the petitioner suggests, manifests an intention that the Act should be construed as narrowly as possible.

This last sentence was inserted in the bill by amendment proposed by the Senate Judiciary Committee in its Report No. 890 accompanying the bill (quoted in full, *infra*, pp. 29-31). The Committee report comments upon the proposed amendment in the following language:

"The present personnel of the Supreme Court includes justices who formerly occupied Federal offices in other branches of the Government. Many of these Justices, either directly or indirectly, have been concerned with the subject matter of pending

litigation prior to their appointment to the Supreme Court of the United States. Consequently, in at least two cases, more than three Justices have disqualified themselves so that a quorum cannot be obtained. The committee believes that this situation is extremely unique and is not likely to occur again at any time in the future. The committee therefore recommends that the bill be amended by making this unusual procedure applicable only to a case now pending before the Supreme Court."

The Committee simply decided that the situation was so unusual that it could be assumed that it would not be likely to recur. Plainly there is nothing in the addition of this final sentence, or in the circumstances calling for its inclusion, which suggest that it was intended to bring about any limited construction of what was to be included in the case certified, or that it was calculated to pull back into this Court a case once certified to the Circuit Court of Appeals.

If the Circuit Court of Appeals had referred the case to a master to advise it on post-trial developments which might affect the necessity for or the nature of the relief to be granted, presumably no one would say that the Circuit Court of Appeals had thereby lost jurisdiction to act upon the basis of the master's report. The fact that it utilized the District Court for this supplemental fact finding task ought to bring about no different result.

(c) *The significance of the statutory provision for filling vacancies in the Circuit Court of Appeals' panel.* The Act of 1944 directs the senior Circuit Judge to empanel a court consisting of himself and the two Circuit Judges next in order of seniority. But Congress did something more. It buttressed this provision by a paragraph (*infra*, p. 28, lines 33-45) providing in considerable elaboration for the filling of vacancies in the panel, first from within the Circuit Court of Appeals involved, and then by calling in judges from other Circuit Courts of Appeals. None of this machinery for filling vacancies would be necessary if the Circuit Court of Appeals were to exhaust its jurisdiction upon a single hearing; in that event the senior Circuit Judge would simply empanel the three senior Judges in his court available on that particular day.

The provision for filling vacancies in the panel implies a continuing panel of Judges to pass upon the cause certified and transferred to the Circuit Court of Appeals. It envisions not merely the possibility of a single vacancy in the panel, but of two or more such vacancies. Here we have the strongest evidence that Congress intended a continuing panel of Circuit Judges to pass upon the issues certified and transferred to it.

(d) *The implications of the finality of the rulings of the Circuit Court of Appeals.* To us, the language of the statute most revealing of the legislative intent is the direction that the decision

“ * * * shall be final and there shall be no review of such decision by appeal or certiorari or otherwise.”

The Circuit Court of Appeals has affirmed the District Court on all issues but one. How could this Court ever consider the dissolution question without reviewing, and at least casting a gloss upon the ruling of the Circuit Court of Appeals in one or more of the respects in which the trial court was affirmed? Even on a simpler basis, how could this Court pass upon the issue of relief without reviewing what the Circuit Court of Appeals has decided on the merits of the problems which underlie relief?

With all deference, it would appear to be humanly impossible for this Court to pick up this case at the precise point where the Circuit Court of Appeals has left it and from there proceed to decide the issue of relief.

The complexity and variety of the issues which have been raised and adjudicated are only hinted at in the counter-statement (*supra*, p. 4). The disposition of these issues by the District Court is reported in 44 F. Supp. 97, and continues to page 311, a total of 215 pages of double columned fine type. The findings of fact and conclusions of law which followed, required 274 additional printed pages. Everything of consequence was challenged in 107 assignments of error, which alone took up 44 printed pages of the record in the Circuit Court of Appeals. That Court has summarized its position on all of these issues in a mere 33 pages, 148 F. 2d 416-448. A mere reading of the appellate opinion reveals that with respect to most of the issues other than the ingot monopoly, the Circuit Court of Appeals has only revealed its position in summary form. Yet, decision with respect to a demand for dissolution might well involve

most of these same issues in great detail. Obviously, this Court would have to make its own rulings with respect to such details because the Circuit Court of Appeals has only revealed its ultimate position and this in very broad outline.

The Circuit Court of Appeals argued that this problem was no different than the question which always arises upon a plea of *res judicata* (R. 325; 164 F. 2d 159, 161); yet, upon reflection, the problems are fundamentally different. A plea of *res judicata* can be passed upon once it is decided what issues were actually raised and what issues could have been raised within the scope of the pleadings in the first case: *Angel v. Bullington*, 330 U.S. 183, 186, 187 (1947, opinion by Mr. Justice Frankfurter). The second court need not concern itself at all with what the first court decided on the merits of those issues. Moreover, it is under no obligation to bring its own thinking into accord with the earlier decision. It is enough that the second court can mark out the *boundaries* of the issues which were or might have been raised before the first court.

This Court is faced by the Congressional mandate that

" * * * there shall be no review of such decision by appeal or certiorari or otherwise."

This is a sweeping prohibition of *any* review of the Circuit Court of Appeals' decision. The two words last quoted would appear to be specifically calculated to prevent a review by way of commentary upon, interpretation of or supplement to any Circuit Court of Appeals decision. If the Circuit Court of Appeals was worried lest any construction that it placed on its own mandate

could be considered a gloss upon its former opinion and therefore beyond its jurisdiction (R. 325; 164 F. 2d 159, 161-162), how much more imperative it is that this Court refrain from putting itself in a position where it could scarcely avoid making the review which Congress has forbidden.

For example: Suppose that on the trial in the District Court of the question of what relief, if any, is required that Court should hold (contrary to the opinion of the Circuit Court of Appeals, 148 F. 2d 416, 433-434) that Alcoa had purchased bauxite or water power or both for the purpose of monopolization. Undoubtedly, Alcoa could appeal such a judgment. Would anyone deny that an appeal from such a ruling would lie to the Circuit Court of Appeals and nowhere else? It could not lie elsewhere under the Act of 1944, for the decision of the Circuit Court of Appeals cannot be reviewed by any other court. This would seem to be a demonstration that the jurisdiction of the Circuit Court of Appeals has not been exhausted by its decision already rendered in this case.

Upon the basis of judicial notice of the tremendous capacity of the aluminum ingot plants built for the Government and Reynolds Metals Company since the close of the trial, the Circuit Court of Appeals remanded the issue of relief from the ingot monopoly to the District Court for further proceedings, 148 F. 2d 416, 445-447. The District Court was directed to determine the issue on the basis of the competitive impact of the new plants (*ibid.* 446-7). In short, the appellate court spelled out for the trial court the considerations that it must treat as controlling in reaching a decision. Whatever appellate court reviews the eventual decision of the Dis-

strict Court on this issue of relief must necessarily pass upon the correctness of and the weight to be attached to the premises which the Circuit Court of Appeals directed the District Court to treat as controlling. For that reason an appeal from such a decision ought to lie only to the Circuit Court of Appeals if due consideration is to be given to the direction of Congress that no other court shall review in any manner the decision of the Circuit Court of Appeals.

Furthermore, the opinion of the Circuit Court of Appeals bears its own evidence that the remanded issue was an integral part of the case previously certified to the Circuit Court of Appeals. In context with that part of the appellate opinion which remanded the issue of relief for further proceedings (148 F. 2d 416, 445-447), the Circuit Court of Appeals stated that under no circumstances would it be willing to send the case back for another trial (*ibid.* 446). One can only conclude that the remanded issue was considered to be a part of the case previously certified and transferred to it.

There is every evidence that Congress did not intend this case to return to this Court, once it had been certified to the Circuit Court of Appeals under the Act of 1944. It was the case, not the appeal, that was to be certified and transferred; and this was the action taken here. The Circuit Court of Appeals was given both jurisdiction and directions to determine the matters referred to it. This is likewise the only construction consistent with the prohibition of any further review by this Court of the case certified. And it accords with the statutory machinery for filling vacancies in the panel, a precaution

necessarily premised upon a continuing panel in the Circuit Court of Appeals.

Strong support for the construction that a case once certified to the Circuit Court of Appeals cannot thereafter be reviewed by this Court is found in the report of the Senate Judiciary Committee (*infra*, pp. 29-31). It is stated in the report that the bill amends the Expediting Act by adding a provision to meet the situation where there is not a quorum in this Court. Then follows this construction of the legislation (*infra*, p. 30):

"The bill provides that in such cases the case shall be immediately certified to the circuit court of appeals of the circuit in which is located the district where the suit was brought, and that the decision of such court shall be final without further review."

Surely there can be no doubt that the Judiciary Committee intended that the decision of the Circuit Court of Appeals upon the "case" was to be "final" and "without further review".

(e) *An analogous ruling of this Court.* The Expediting Act of 1903, 15 U.S.C., §§ 28-29, furnishes a close analogy in support of our interpretation of the 1944 Act. Under the Expediting Act, the filing of a certificate by the Attorney General that "the case" is of general public importance requires that such case be given precedence and "assigned for hearing" at the earliest practicable day before at least three judges.

This Court has ruled that such a certificate is not exhausted at the conclusion of the hearing but applies as well to proceedings pursuant to a reversing mandate:

Ex parte United States, 226 U.S. 420 (1913, opinion by Mr. Chief Justice White). That case arose on an action in equity to dissolve the Terminal Railroad Association of St. Louis as a combination in restraint of trade. An expediting certificate was filed and the case heard in the District Court by four Circuit Judges. By a divided court, they dismissed the bill. Upon appeal, the decree of dismissal was reversed and the cause remanded with directions that the Terminal Association be reorganized on a basis outlined by this Court or, failing reorganization, that the combination be dissolved: *United States v. Terminal Railroad Association of St. Louis*, 224 U.S. 383 (1912, opinion by Mr. Justice Lurton). The court below, acting by a single Judge, began proceedings to carry out the mandate of this Court, overruling the suggestion of the Attorney General that under the outstanding expediting certificate a three judge court was required. The single District Judge pointed out that the expediting certificate required only that the case be expedited and that it be "assigned for hearing" at the earliest practicable day before three judges. He found "hearing" to be synonymous with "trial" and concluded that the effect of the certificate was spent after the special court had rendered its decision: *United States v. Terminal Association of St. Louis*, 197 Fed. 446, 448 (E. D. Mo., 1912, opinion by Judge Trieber). The United States petitioned this Court for a writ of prohibition which was granted, it being held here that the expediting certificate had not been spent by the hearing on the merits in the District Court, but continued to be effective with respect to subsequent proceedings in the District Court to carry out the mandate of this Court: *Ex parte United States*, *supra*, 226 U.S. 420, 425.

The controlling words in the Expediting Act of 1903 are quite parallel to those in the Act of 1944 and the principles of construction which led to the ruling that the expediting certificate included proceedings subsequent to a reversing mandate should be equally applicable to a certification and transfer under the Act of 1944.

Cf. Baltimore & Ohio Railroad Co. v. United States, 279 U. S. 781 (1929, opinion by Mr. Justice Butler), where it was held that the jurisdiction of the three-judge statutory court required to set aside an order of the Interstate Commerce Commission, included power, after mandate from this Court directing the setting aside of such an order, to direct restitution of monies paid under it.

Conclusion.

The petition to the Circuit Court of Appeals for a writ of mandamus (R. 1) was predicated upon the premise that the District Court was disobeying the appellate court's mandate of March 28, 1945. While disputing the soundness of the premise, we see no escape from the fact that the Circuit Court of Appeals had both the jurisdiction and the duty to protect and enforce its outstanding mandate to the District Court. All of this we believe to be fundamental, even though we are convinced that there is not the slightest basis in law or fact for the petitioner's contention that the District Court was in the process of violating the appellate mandate.

The petition to the Circuit Court of Appeals for a writ of mandamus raised no issue that affects the

future appellate jurisdiction either of that court or of this Court. We submit that it would be a mistake to determine that question until such future appellate jurisdiction is either interfered with or invoked.

Respectfully submitted,

WILLIAM WATSON SMITH

FRANK B. INGERSOLL

LEON E. HICKMAN

1025 Union Trust Building
Pittsburgh, Pennsylvania

CHARLES E. HUGHES, JR.

L. HOMER SURBECK

One Wall Street
New York, New York

*Counsel for Respondent,
Aluminum Company of America.*

April 8, 1948

APPENDIX 1.

Act of June 9, 1944, c. 239, 58 Stat. 272, 15 U. S. C. § 29

[Underscoring and marginal numbering added]

AN ACT

To amend the Expediting Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of February 11, 1903, chapter 544, be amended to read as follows:

1 "In every suit in equity brought in any district
2 court of the United States under sections 1-7 of this
3 title, wherein the United States is complainant, an
4 appeal from the final decree of the district court will
5 lie only to the Supreme Court and must be taken
6 within sixty days from the entry thereof: *Provided,*
7 *however,* That if, upon any such appeal, it shall be
8 found that, by reason of disqualification, there shall
9 not be a quorum of Justices of the Supreme Court
10 qualified to participate in the consideration of the
11 case on the merits, then, in lieu of a decision by
12 the Supreme Court, the case shall be immediately
13 certified by the Supreme Court to the circuit court
14 of appeals of the circuit in which is located the dis-
15 trict in which the suit was brought which court
16 shall thereupon have jurisdiction to hear and de-
17 termine the appeal in such case, and it shall be the
18 duty of the senior circuit judge of said circuit court
19 of appeals, qualified to participate in the consid-
20 eration of the case on the merits, to designate
21 immediately three circuit judges of said court, one
22 of whom shall be himself and the other two of
23 whom shall be the two circuit judges next in order

of seniority to himself, to hear and determine the appeal in such case and it shall be the duty of the Court, so comprised, to assign the case for argument at the earliest practicable date and to hear and determine the same, and the decision of the three circuit judges so designated, or of a majority in number thereof, shall be final and there shall be no review of such decision by appeal or certiorari or otherwise.

"If, by reason of disqualification, death or otherwise, any of said three circuit judges shall be unable to participate in the decision of said case, any such vacancy or vacancies shall be filled by the senior circuit judge by designating one or more other circuit judges of the said circuit next in order of seniority and, if there be none such available, he shall fill any such vacancy or vacancies by designating one or more circuit judges from another circuit or circuits, designating, in each case, the oldest available circuit judge, in order of seniority, in the circuit from which he is selected, such designation to be only with the consent of the senior circuit judge of any such other circuit."

This Act shall apply to every case pending before the Supreme Court of the United States on the date of its enactment.

Approved June 9, 1944.

APPENDIX 2.

The report of the Senate Judiciary Committee on the
Act of 1944.

Calendar No. 910

78TH CONGRESS }
2d Session }

SENATE

REPORT
No. 890

AMENDING THE EXPEDITING ACT

MAY 19 (legislative day, MAY 9), 1944.—

Ordered to be printed

MR. MCCARRAN, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H. R. 3054]

The Committee on the Judiciary, to whom was referred the bill H. R. 3054, to amend the Expediting Act, having considered the same, report the bill favorably with amendments to the Senate, with the recommendation that it do pass, as amended.

AMENDMENTS

On page 2, line 3, strike out the word "sent" and insert the word "certified".

On page 2, line 5, after the word "brought", insert the words "which court shall thereupon have jurisdiction to hear and determine the appeal in such case,".

On page 2, line 18, after the words "by reason of", insert the word "disqualification".

On page 3, strike out lines 5, 6, and 7 and insert in lieu thereof: "This Act shall apply to every case pending before the Supreme Court of the United States on the date of its enactment."

STATEMENT

The bill amends the present statute which provides for appeals only to the Supreme Court in suits in equity brought under the anti-trust laws in district courts of the United States (sec. 2 of the act of February 11, 1903, 15 U. S. C. 29), by adding a provision to meet the situation in which there is not a quorum of the Court by reason of disqualification of some of the Justices of the Supreme Court.

Since the present requirement for a quorum is fixed at six by a statute enacted in 1863, a quorum cannot be obtained in any case where more than three of the Justices disqualify themselves.

The bill provides that in such cases the case shall be immediately certified to the circuit court of appeals of the circuit in which is located the district where the suit was brought, and that the decision of such court shall be final without further review.

The present personnel of the Supreme Court includes justices who formerly occupied Federal offices in other branches of the Government. Many of these Justices, either directly or indirectly, have been concerned with the subject matter of pending litigation prior to their appointment to the Supreme Court of the United States. Consequently, in at least two cases, more than three Justices have disqualified themselves so that a quorum

cannot be obtained. The committee believes that this situation is extremely unique and is not likely to occur again at any time in the future. The committee therefore recommends that the bill be amended by making this unusual procedure applicable only to a case now pending before the Supreme Court.

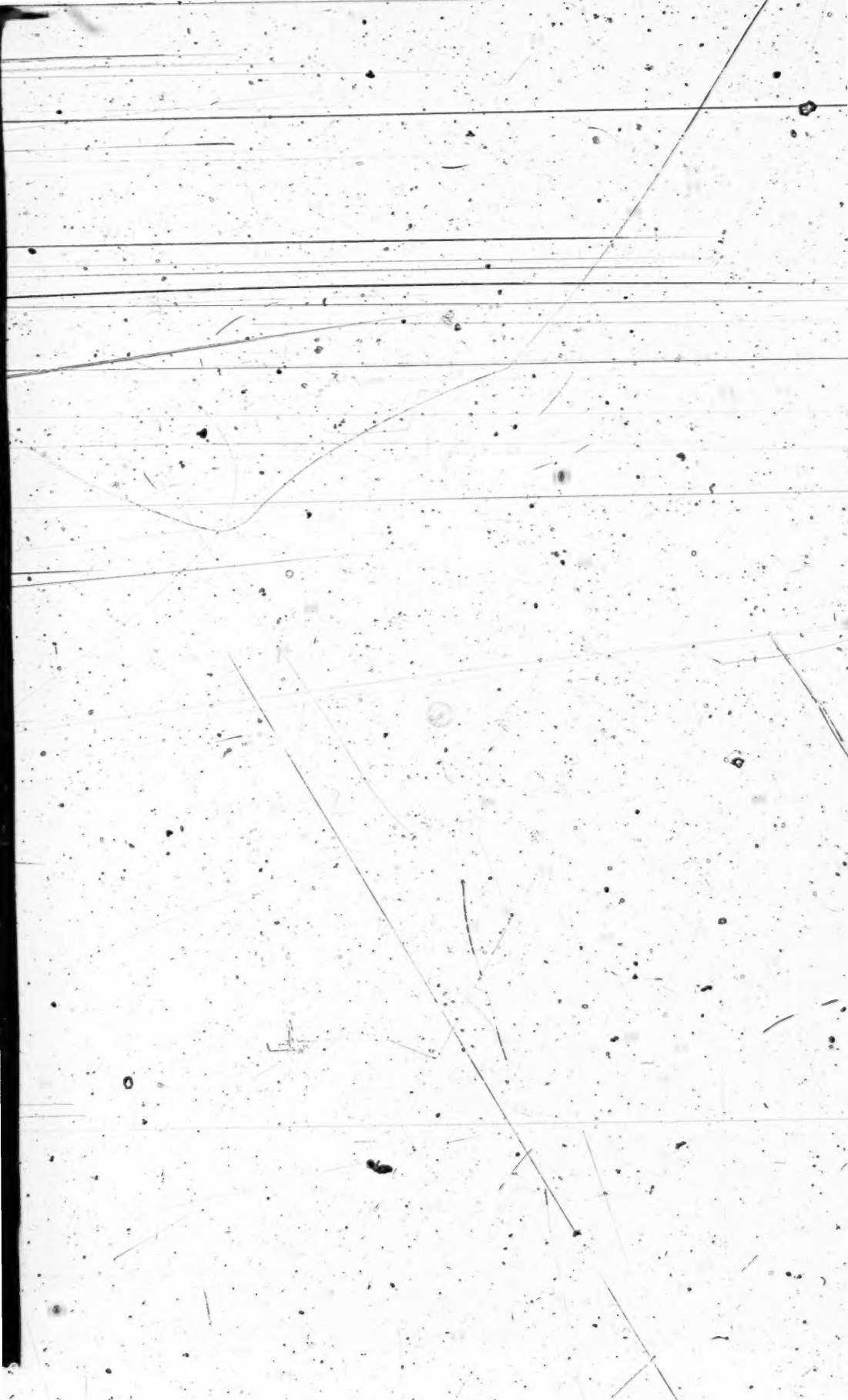
APPENDIX 3.

The Certificate of this Court.

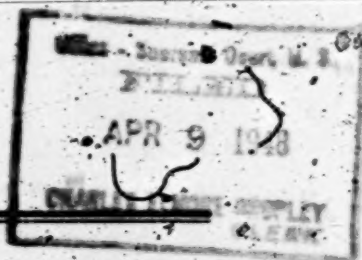
[322 U.S. 716]

No. 2. UNITED STATES V. ALUMINUM COMPANY OF AMERICA ET AL. Appeal from the District Court of the United States for the Southern District of New York. June 12, 1944. *Per Curiam*: In this case there is wanting a quorum of six Justices qualified to hear it, see 320 U.S. 708. The cause is accordingly certified and transferred to the Circuit Court of Appeals for the Second Circuit, pursuant to § 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U.S.C., § 29, as amended by the Act of June 9, 1944, c. 239, 58 Stat. 272. Reported below: 47 F. Supp. 647.*

* The correct citation of the opinion below is 44 F. Supp. 97.



FILE COPY



IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,

v.

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, THE
HONORABLE FRANCIS G. CAFFEY, Judge of the
United States District Court for the Southern Dis-
trict of New York, and ALUMINUM COMPANY OF
AMERICA, a corporation, Respondents.**

**BRIEF ON BEHALF OF
JUDGE FRANCIS G. CAFFEY**

**WILLIAM WATSON SMITH
FRANK B. INGERSOLL
LEON E. HICKMAN
1025 Union Trust Building
Pittsburgh, Pennsylvania**

**CHARLES E. HUGHES, JR.
L. HOMER SURBECK
One Wall Street
New York, New York**

**Counsel for Respondent,
Francis G. Caffey, United States
District Judge.**

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

NO. 527

UNITED STATES OF AMERICA, Petitioner,

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**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, THE
HONORABLE FRANCIS G. CAFFEY, Judge of the
United States District Court for the Southern Dis-
trict of New York, and ALUMINUM COMPANY OF
AMERICA, a corporation, Respondents.**

**BRIEF ON BEHALF OF
JUDGE FRANCIS G. CAFFEY**

The respondent, Judge Francis G. Caffey, has held a retired status as a Judge of the United States District Court for the Southern District of New York since October 30, 1947. Neither he nor the Court of which he is a member cares to express any opinion with respect to the jurisdiction of the Circuit Court of Appeals to hear the mandamus petition addressed to it.

However, both the Judge and the District Court are interested in any review of the judgment or decision of the Judge which may be undertaken in any mandamus action in which either or both are named as respondents. The Judge has filed an answer in the mandamus proceeding which originated in the Circuit Court of Appeals (R. 328). If the jurisdiction of the Circuit Court of Appeals should be sustained and a further hearing on the mandamus is held, he will desire to file a brief and be represented in oral argument. Likewise, he will wish to file an answer and a brief and be represented in an oral argument if the petitioner is permitted to file its motion for mandamus in this Court at No. 303 Miscellaneous. Presumably, the District Court will take the same position.

The position of the District Court is somewhat anomalous with respect to the mandamus proceeding which originated in the Circuit Court of Appeals. Properly enough, it was not named as a respondent (R. 1)—although the Judge was. Curiously, however, the Court has now been named by the petitioner as a respondent in the current review by the informal expedient of listing it as a party respondent in the caption, although not so included originally and not added by amendment or otherwise. We do not mean to suggest the lack of a proper party at this juncture, for Judge Caffey is still a member of the Court, although in retired status. If the petitioner desires that the District Court be treated as a respondent in any further proceedings in this cause, it is to be presumed that it will proceed by amendment to add the Court as a respondent. If that is done, it may be assumed that the Court will desire to plead and participate in any mandamus proceeding in which it is

a respondent and in which its judgment or decision is under attack.

Respectfully submitted,

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
1025 Union Trust Building,
Pittsburgh, Pennsylvania.

CHARLES E. HUGHES, JR.,
L. HOMER SURBECK,
One Wall Street,
New York, New York.

*Counsel for Respondent,
Francis G. Caffey, United
States District Judge.*

April 8, 1948.

SUPREME COURT OF THE UNITED STATES

No. 527.—OCTOBER TERM, 1947.

The United States of America, Petitioner, v. United States District Court for the Southern District of New York, et al.	On Writ of Certiorari to the United States Circuit Court of Ap- peals for the Second Circuit.
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[May 24, 1948.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The United States brought a proceeding against the Aluminum Company of America (Alcoa) and others to prevent and restrain certain violations of the Sherman Act. 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 2, 4. After trial the District Court dismissed the complaint. 44 F. Supp. 97. The case came here by appeal, after which we ascertained that due to the disqualification of four Justices to sit in the case, we were without a quorum. Accordingly, we transferred the case to a special docket and postponed further proceedings in it until such time as there was a quorum of Justices qualified to sit in it. 320 U. S. 708. Thereafter Congress amended the statute which provides for a direct appeal to this Court from the District Court in antitrust cases. The Act of June 9, 1944, c. 239, 58 Stat. 272, 15 U. S. C. Supp. V, § 29, passed to meet the contingency of the lack of a quorum here, provides:

“In every suit in equity brought in any district court of the United States under any of said Acts, wherein the United State is complainant, an appeal

¹ See H. R. Rep. No. 1317, 78th Cong., 2d Sess.; Sen. Rep. No. 890, 78th Cong., 2d Sess.

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from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided, however,* That if, upon any such appeal, it shall be found that, by reason of disqualification, there shall not be a quorum of Justices of the Supreme Court qualified to participate in the consideration of the case on the merits, then, in lieu of a decision by the Supreme Court, the case shall be immediately certified by the Supreme Court to the circuit court of appeals of the circuit in which is located the district in which the suit was brought which court shall thereupon have jurisdiction to hear and determine the appeal in such case, and it shall be the duty of the senior circuit judge of said circuit court of appeals, qualified to participate in the consideration of the case on the merits, to designate immediately three circuit judges of said court, one of whom shall be himself and the other two of whom shall be the two circuit judges next in order of seniority to himself, to hear and determine the appeal in such case and it shall be the duty of the court, so comprised, to assign the case for argument at the earliest practicable date and to hear and determine the same, and the decision of the three circuit judges so designated, or of a majority in number thereof, shall be final and there shall be no review of such decision by appeal or certiorari or otherwise.

"If, by reason of disqualification, death or otherwise, any of said three circuit judges shall be unable to participate in the decision of said case, any such vacancy or vacancies shall be filled by the senior circuit judge by designating one or more other circuit judges of the said circuit next in order of seniority and, if there be none such available, he shall fill any such vacancy or vacancies by designating one or more circuit judges from another circuit or circuits,

designating, in each case, the oldest available circuit judge, in order of seniority, in the circuit from which he is selected, such designation to be only with the consent of the senior circuit judge of any such other circuit.

"This Act shall apply to every case pending before the Supreme Court of the United States on the date of its enactment."

Thereupon we certified the cause to the Circuit Court of Appeals for the Second Circuit. 322 U. S. 716. That court heard the case, sustained charges of monopoly against Alcoa, reversed the judgment of dismissal, and remanded the cause for further proceedings not inconsistent with its opinion. 148 F. 2d 416. It left open the question of the remedies to be applied. Nearly five years had passed since the evidence was closed, war had intervened, new plants had been constructed by the government, and their disposition under the Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. A. § 1611, would affect the competitive situation in the ingot market. Petitioner had asked for Alcoa's dissolution. But that question was deferred until Alcoa's position in the industry after the war was known. 148 F. 2d pp. 445-447.

On remand of the cause the District Court entered its judgment on the mandate on April 23, 1946. It enjoined certain practices and retained jurisdiction of the cause until after the Surplus Property Administrator shall have proposed a plan for disposition of the government owned aluminum plants or facilities, in order that the Attorney General might institute proceedings for the dissolution or partial dissolution of Alcoa or for the enforcement of such plan if it will establish competitive conditions in the industry or for such other relief as will establish them; "and for the purpose of enabling Aluminum Company to apply to this court for a determination of the question whether it still has a monopoly of the aluminum ingot market in the United States."

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Pursuant to the quoted provision Alcoa filed a petition in the District Court praying that a final judgment be entered adjudicating that it no longer has a monopoly of the aluminum ingot market in the United States and that as a consequence competitive conditions in the industry have been restored. The motion of the United States to dismiss the petition was denied and the question whether Alcoa still had a monopoly was set for trial. The United States thereupon filed a petition for a writ of mandamus in the Circuit Court of Appeals to require the district judge to vacate so much of its judgment of April 23, 1946, as reserved jurisdiction to enable Alcoa to apply for a determination whether it still has a monopoly, and to dismiss the petition of Alcoa.

The Circuit Court of Appeals dismissed the petition for mandamus. 164 F. 2d 159. The case is here on a petition for a writ of certiorari which we granted to settle the important question under the Act.

The Circuit Court of Appeals concluded that its power to issue the writ of mandamus exists only as an incident to its jurisdiction to entertain an appeal from a judgment of the District Court. It read the Act of June 9, 1944, as confining its jurisdiction to the determination of the appeal which it had heard under our certificate. Moreover, control over its mandate ended with the end of the term during which the mandate went down.² The court therefore concluded that it had no power to issue the writ.

We put to one side the question whether another appeal in the case would be decided by the Circuit Court of Appeals or by this Court, now that there is a quorum of Justices qualified to sit in it. No matter how that question were resolved, it is our opinion that the Circuit Court

² The term of court in which the mandate issued expired September 30, 1945, on which day the court lost power to change it except as to matters of form. See *Fairmont Creamery Co. v. Minnesota*, 275 U. S. 70.

of Appeals has jurisdiction in this mandamus proceeding.

Section 262 of the Judicial Code, 28 U. S. C. § 377, provides that the federal courts "shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." It was early recognized that the power to issue a mandamus extended to cases where its issuance was either an exercise of appellate jurisdiction or in aid of appellate jurisdiction. See *Marbury v. Madison*, 1 Cranch 137, 175; *Ex parte Crane*, 5 Pet. 190. That power protects the appellate jurisdiction which might be otherwise defeated and extends to support an ultimate power of review, though it not be immediately and directly involved. *McClellan v. Carland*, 217 U. S. 268. *Ex parte United States*, 287 U. S. 241, 246. In that category will often fall cases involving issuance of mandamus requiring the lower court to enforce the judgment of the appellate court. *Delaware L. & W. R. Co. v. Rellstab*, 276 U. S. 1, 5.

But the fact that mandamus is closely connected with the appellate power does not necessarily mean that the power to issue it is absent where there is no existing or future appellate jurisdiction to which it can relate. Cf. *Chickaming v. Carpenter*, 106 U. S. 663, 665. *In re Washington & Georgetown R. Co.*, 140 U. S. 91, is a case in point. The lower court in violation of the mandate of this Court allowed interest on a judgment. The amount of the interest was too small to be the subject of a writ of error from this Court. It was held that mandamus was the proper remedy to enforce compliance with the mandate. And see *City Bank v. Hunter*, 152 U. S. 512, 515. It is, indeed, a high function of mandamus to keep a lower tribunal from interposing unauthorized obstructions to enforcement of a judgment of a higher court. *Delaware, L. & W. R. Co. v. Rellstab*, *supra*. That func-

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tion may be as important in protecting a past exercise of jurisdiction as in safeguarding a present or future one. When Congress authorized "the case" to be certified to the Circuit Court of Appeals, it excepted none of the powers of that court which might be brought to bear on the litigation. Those powers include the power to issue mandamus to protect the mandate of the Circuit Court of Appeals, even though we assume *arguendo* that all further appeals in the case would come here.

The Circuit Court of Appeals seems to have been influenced to the other view by the feeling that the question presented by the mandamus cuts so wide a swathe in the litigation that it should hold its hand. Its position was that the issue raised by the petition for mandamus had an important relation to the reserved problem of dissolution, that the judgment on dissolution would in its view eventually come here on appeal, that any ruling by it on the mandamus would therefore limit our freedom to deal with the dissolution issue as, if, and when it got here.

Those considerations may be of large importance in the totality of this proceeding, once we accept the premise of the Circuit Court of Appeals that it will have nothing to do with any other appeals in the case. But they do not seem to us germane to the question whether the Circuit Court of Appeals has the power to enforce obedience to its mandate. We think the Act of June 9, 1944, gave the Circuit Court of Appeals the full amplitude of judicial power to deal with the cause which we certified. That power does not contract with the importance or gravity of the question presented. The power to compel obedience with the mandate turns on whether the lower court has obstructed enforcement of it, not on the collateral repercussions which enforcement may entail.

Reversed.

MR. JUSTICE MURPHY and MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

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SUPREME COURT OF THE UNITED STATES

No. 527.—OCTOBER TERM, 1947.

The United States of America,
Petitioner,

v.

United States District Court for
the Southern District of New
York, et al.

On Writ of Certiorari
to the United States
Circuit Court of Ap-
peals for the Second
Circuit.

[May 24, 1948.]

MR. JUSTICE FRANKFURTER, concurring.

When this case originally came here by appeal, an extraordinarily rare, if not unique, situation in the history of the Court precluded its consideration for want of a qualified quorum. The impasse was met by the special jurisdictional Act of June 9, 1944, 58 Stat. 272, 15 U. S. C. § 29. For reasons that seem to me too obvious to need spelling-out, that Act should be interpreted as transferring to the Circuit Court of Appeals *the case* and not merely a stage in its disposition if the Congressional language reasonably permits the Act to be so read. Since it can be so read I do so read it and conclude that the whole appellate process in this case was vested in the Circuit Court of Appeals, regardless of the piecemeal exercise of that process. I find such a construction of the Act of June 9, 1944, freer from difficulties than some of the technical questions pertaining to mandamus that arise on the view taken by the Court.